

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION

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RODNEY D. PIERCE, et al,

Plaintiffs,

vs.

4:23-CV-193-D-RN

THE NORTH CAROLINA STATE BOARD OF ELECTIONS, et al,

Defendants.  
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FEBRUARY 6, 2025  
BENCH TRIAL - DAY 4  
BEFORE THE HONORABLE JAMES C. DEVER III  
UNITED STATES DISTRICT JUDGE

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Official Court Reporter  
United States District Court  
Raleigh, North Carolina  
Stenotype with computer-aided transcription

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PLAINTIFFS' EXHIBITS

<u>NUMBER</u>	<u>RECEIVED</u>
222	29

LEGISLATIVE DEFENDANTS' EXHIBITS

<u>NUMBER</u>	<u>RECEIVED</u>
58	34
60, 33 - 40	204

## R. Hise - Cross-Examination

1 (Thursday, February 6, 2025, commencing at 9:00 a.m.)

2 **P R O C E E D I N G S**

3 THE COURT: Good morning. You may continue the  
4 direct examination, unless there's anything else.

5 MR. STRACH: Literally one question left, which I'll  
6 frame it since we're in the morning now.

7 BY MR. STRACH:

8 Q. Good morning, Senate Hise. When we broke yesterday we  
9 were talking about Senate Blue's amendments on the Senate  
10 floor. Do you recall that?

11 A. I do.

12 Q. Only question is: What happened with those amendments?

13 A. Both those members were tabled by the Senate body.

14 MR. STRACH: Thank you. Your Honor, those are all  
15 the questions I have at this time.

16 THE COURT: Cross-examination.

17 MR. FREEDMAN: Thank you, Your Honor.

18 **CROSS-EXAMINATION**

19 BY MR. FREEDMAN:

20 Q. Good morning, Senator. I'm John Freedman for the  
21 Plaintiffs.

22 I want to start by going over the chronology and setting  
23 some dates for some of the events you testified about  
24 yesterday afternoon. Am I correct that the initial draft  
25 version of the 2023 Senate map was filed on October 18th,

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1 2023?

2 A. I believe so, yes.

3 Q. And the 2023 Senate map wasn't provided do Democratic  
4 legislators prior to the public release -- prior to the  
5 release of the map on October 18th, right?

6 A. That's correct.

7 Q. Now, the three public hearings you referenced during your  
8 testimony yesterday, those occurred on September 25th,  
9 September 26th, and September 27th in Elizabeth City, Hickory,  
10 and Raleigh, right?

11 A. That's correct.

12 Q. So those public hearings were all several weeks before a  
13 draft Senate map was filed on October 18th, right?

14 A. That is correct.

15 Q. And there were no public hearings around the state like  
16 the kind you testified about yesterday after the map was  
17 released on October 18th, right?

18 A. That's correct. The committee held its public -- its  
19 open committee meetings after that, but no separate public  
20 hearings.

21 Q. Thank you. Now, yesterday near the time we broke, you  
22 testified about an invitation you extended for evidence to be  
23 submitted to the committee; do you recall that?

24 A. I did, on multiple occasions, yes.

25 Q. Okay. And the offer that I've seen in the record was

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1 made during the Redistricting and Elections Committee hearing  
2 on October 19th, right?

3 A. That was one of them, yes.

4 Q. During the October 19th hearing, you invited other  
5 members of the committee and third parties to provide a strong  
6 basis in evidence that the Gingles preconditions are present  
7 in a particular area of the state, right?

8 A. I did.

9 Q. Those were the words you used, right?

10 A. It does.

11 Q. Now, in describing this yesterday, you said that you  
12 asked people who have evidence of legally significant racially  
13 polarized voting to submit that to the committee, but you  
14 didn't actually use those words in conveying the request to  
15 the public, did you?

16 A. I wouldn't be specific as to my -- I don't have a  
17 specific recollection as to my wording, but I'll assume that I  
18 did not.

19 Q. Now, after your invitation on October 19th, three days  
20 later on October 22nd, the Southern Coalition for Social  
21 Justice submitted a letter to the General Assembly appending a  
22 memo containing an analysis of the proposed Senate map  
23 conducted by Dr. Kassra A.R. Oskooii, right?

24 A. I believe that was -- we received a letter from that  
25 group, yes.

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1 Q. I'll spell that for the record. His last name is  
2 O-s-k-u-i-i. We'll come back to the letter in a little bit.

3 The Senate map was passed by the General Assembly three  
4 days later on October 25th, right?

5 A. Yes, that seems correct.

6 Q. Thank you. So I want to turn now to the region of the  
7 state that this case is about.

8 You're aware, aren't you, that there are counties in the  
9 northeast part of the state that have a majority-Black  
10 population?

11 A. Yes.

12 Q. And you would agree that setting aside the Stephenson  
13 criteria it is possible to draw a Senate district in the  
14 northeast part of the state with a majority-Black population?

15 A. It would depend how you would reference the northeast  
16 part of the state. Senator Blue made the claim on his  
17 amendment that he had drawn a majority-minority district in  
18 the northeast part of the state.

19 Q. In fact, your view is that not only is it possible if  
20 said aside the Stephenson criteria, you agree it's likely that  
21 such a district could be drawn, right?

22 A. I have not done so nor have I drawn any of those maps,  
23 but, again, Senator Blue claims that he had.

24 Q. Sir, do you recall testifying in your deposition when  
25 asked if you were to set aside the Stephenson criteria,

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1 whether it would be possible to draw a Senate district in the  
2 northeast part of the state with majority-Black population, do  
3 you recall that you testified "it is likely that it could be  
4 done"?

5 A. Considering that Blue had claimed to do so in an  
6 amendment plus other considerations, I think it is likely it  
7 could have been done if you ignore both Stephenson criteria  
8 and other traditional redistricting principles.

9 Q. Why don't we take a look at your deposition testimony.

10 MR. FREEDMAN: Troy, can you pull up transcript, and  
11 this is September 16th testimony transcript, lines 119, 2 to  
12 6.

13 BY MR. FREEDMAN:

14 Q. And the question you were asked was: Setting aside the  
15 Stephenson criteria, do you know one way or the other whether  
16 it is possible to draw Senate district in the northeast part  
17 of the state with the majority-Black population?

18 And your answer was: It is likely that it could be done.

19 That was the question and that was your response, right?

20 A. Yes.

21 Q. Okay. Now, your understanding of the Stephenson decision  
22 is that you must comply with federal law, right?

23 A. Yes.

24 Q. And it's fair to say if evidence exists that the  
25 legislature is required to draw a district to comply with



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1 federal law, that supersedes Stephenson, right?

2 A. I believe we can comply with both Stephenson and federal  
3 law at the same time; but, yes, there is philosophy that if we  
4 were required to do something under federal law when we have  
5 historically drawn these districts, it did supersede to county  
6 poddings.

7 Q. Do you recall testifying at your deposition, sir, that,  
8 quote, "In general, if the evidence exists that we're required  
9 to draw the district by complying with federal law even if  
10 that supersedes Stephenson, then we have to supersede  
11 Stephenson"?

12 A. That's correct.

13 Q. Now, yesterday and earlier in my questioning you  
14 referenced several times the term legally significant  
15 polarized voting; do you recall that?

16 A. I do.

17 Q. And is it fair to say that your understanding of the term  
18 legally significant racially polarized voting is that is a  
19 determination that would be found by the courts, right?

20 A. Legal standards are generally defined by the courts, yes.

21 Q. Okay. And do you recall that when you were asked at your  
22 deposition what your understanding of the term legally  
23 significant racially polarized voting was, you responded it is  
24 in general a determination that would be found by the courts  
25 by the legal system? Do you recall that?

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1 A. That is correct.

2 Q. And your view is that only the courts can make a  
3 determination that there is legally significant racially  
4 polarized voting, right?

5 A. Yes. We've made attempts and all the decisions we made  
6 have been decided in previous court cases.

7 Q. And your view is that only a court can provide evidence  
8 of legally significant racially polarized voting?

9 A. I would not say that a court provides evidence of legally  
10 significant. The court makes determinations.

11 Q. Do you recall testifying in your deposition, because of  
12 this definition of legally significant, I would determine that  
13 only the courts can make that decision?

14 A. Ultimately, yes.

15 Q. Now, on the -- on the committee you and the other chairs  
16 of the Redistricting and Elections Committee didn't ask  
17 anyone, no staff, no consultant, no lawyer to analyze whether  
18 there was racially polarized voting in any district in the  
19 2023 map, right?

20 A. We gave no directives of the committee. Again, we asked  
21 the public on multiple occasions, I asked the public on  
22 multiple occasions to submit any evidence they had done.

23 Q. So you never asked anybody that you controlled to make  
24 that analysis, right?

25 A. No. We never directed any staff to make such an

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1 analysis.

2 Q. You never commissioned any voter studies to determine  
3 whether there's legally significant racially polarized voting  
4 in Senate Districts 1 or 2, right?

5 A. No, we did not.

6 Q. Now, you were aware that there were people who claim that  
7 they can conduct analyses whether there's legally significant  
8 racially polarized voting in a particular area of the state,  
9 right?

10 A. There are a lot of claims, yes.

11 Q. And the North Carolina Legislature has hired such experts  
12 in the past, right?

13 A. I don't know how far you would go back in the past, but I  
14 believe analysis have been done when creating VRA districts in  
15 the past. We have not done such since I have been chair of  
16 the Senate committee.

17 Q. For example, in 2011, your first year on the  
18 Redistricting Committee, the General Assembly hired Dr. Thomas  
19 Brunell to study racially polarized voting, right?

20 A. They did.

21 Q. And you're aware that the map that he analyzed contained  
22 a majority-minority district?

23 A. In 2011, we drew a majority-minority district, yes.

24 MR. FREEDMAN: Let's pull up Joint Exhibit 65 which  
25 is the map that we're talking about.

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1 BY MR. FREEDMAN:

2 Q. Are you familiar with this map, sir?

3 A. It's been a long time, but I do remember this process.

4 Q. You're aware that Senate District 3 was a majority-Black  
5 district, right?

6 A. I believe it was. I believe that was the VRA district.

7 Q. And that district wasn't challenged in any litigation,  
8 you're aware of that, right?

9 A. Correct.

10 Q. So it was possible to create a VRA district that wasn't  
11 challenged as a racial gerrymander, right?

12 A. Under the 2010 Census it also, as I understand, contained  
13 whole counties. And so under a different dataset, was it  
14 possible to create a whole county district that also served in  
15 that, that is the district is represented here.

16 Q. So our record is clear, let's pull up the stat pack  
17 associated with this.

18 MR. FREEDMAN: Troy, can you pull up Joint  
19 Exhibit 66 and let's go to page 3 of 10.

20 BY MR. FREEDMAN:

21 Q. This is a Joint Exhibit, sir. It's the stat pack for the  
22 map we've been looking at and let's just look at the  
23 demographics for Senate District 3. If you go to the column  
24 percentage total Black, you see that the North Carolina  
25 Legislature created a 52.43 percent Black district. Do you

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1 see that?

2 A. Yes.

3 Q. And that district was never challenged in any litigation,  
4 was it?

5 A. Not to my knowledge. Specifically, I think the entirety  
6 of the map was challenged.

7 Q. We can pull that down. Now, for that map, the  
8 legislature hired an expert to analyze racially polarized  
9 voting, right?

10 A. Correct.

11 Q. Dr. Brunell. Sorry. You need to answer audibly.

12 A. That was the individual that was hired, yes.

13 Q. And in 2023, you didn't hire such a person, right?

14 A. We did not.

15 Q. You could have hired somebody to determine whether there  
16 was a statistically significant racially polarized voting,  
17 right?

18 A. That is something that -- an analysis that could be  
19 performed depending on the other factors, but yes.

20 Q. And you could have hired an attorney to provide a legal  
21 opinion whether any finding of racially polarized voting was  
22 legally significant, right?

23 A. The -- if you chose someone that was statistically  
24 significant, any other researcher statistician should be able  
25 to verify that information. It's my opinion when you hire

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1 someone to give you a legal opinion, you may find out that  
2 there are multiple legal opinions as to whether something met  
3 a particular criteria.

4 Q. You don't think that you could have hired somebody to  
5 give you analysis or an opinion that there was legally  
6 significant racially polarized voting in the State of North  
7 Carolina, right?

8 A. As we saw in other districts back from 2011, we presented  
9 the information, had the information and the courts found  
10 otherwise with different districts within that state. So I  
11 don't think there is an analysis you could do that would  
12 withhold a court opinion because an analysis was done by an  
13 illegal opinion.

14 Q. Only a court could make that determination, right, sir?

15 A. As so far I think all that have found not to meet that  
16 criteria we've done previously, that determination was done by  
17 the courts.

18 Q. So just to summarize. You didn't have anybody on your  
19 staff look at whether there was racially polarized voting?

20 A. We did not do any separate analysis of racially polarized  
21 voting, correct.

22 Q. You did not have any of your lawyers or consultants  
23 trying to determine whether there was racially polarized  
24 voting?

25 MR. STRACH: Objection, Your Honor, to the extent

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1 this is designed to elicit attorney-client privilege  
2 information about legal advice received during the  
3 redistricting process, we'd ask that -- I'd like to be able to  
4 instruct the witness not to disclose legal advice.

5 MR. FREEDMAN: I will rephrase, Your Honor.

6 THE COURT: Thank you.

7 MR. FREEDMAN: I will rephrase, Your Honor.

8 THE COURT: Thank you.

9 BY MR. FREEDMAN:

10 Q. You didn't have any of your consultants try to determine  
11 whether there was legally significant racially polarized  
12 voting in North Carolina?

13 A. We did not have outside consultants for this iteration of  
14 drawing the maps.

15 Q. You outsource the obligation to assess whether there was  
16 racially polarized voting to the public, right?

17 A. To those who were making the claim that there was  
18 racially polarized voting, yes.

19 Q. So turning back to the offer that you made on  
20 October 19th for people to come forward to provide the  
21 committee with evidence to provide a strong basis that the  
22 Gingles preconditions are present in a particular area, you  
23 recall making that offer?

24 A. Yes.

25 Q. So I want to make sure I just understand various parts of

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1 your testimony. Even though you solicited third parties to  
2 send in strong basis evidence, your view is that only courts  
3 can make the determination that there's legally significant  
4 racially polarized voting, right?

5 A. The final arbiter of all of those cases has been the  
6 courts for multiple years that I've served on this committee.

7 Q. So when the committee was provided evidence of racially  
8 polarized voting, at least analysis of it, in the northeastern  
9 part of the state, you concluded it wasn't legally  
10 significant, right?

11 A. I do not believe the committee was presented evidence.  
12 They were presented something clearly defined as preliminary  
13 information from a preliminary study who claimed that we  
14 should change the two districts back to the previous  
15 configuration. Not that claimed we would have to draw a VRA  
16 district as a result of their information.

17 Q. The preliminary analysis provided to the committee three  
18 days after this public solicitation for evidence was made,  
19 right?

20 A. That's when we received the letter, yes.

21 Q. And three days before the General Assembly without doing  
22 anything further to analyze racially polarized voting passed  
23 the map?

24 A. That is correct, although the stat pack became available  
25 after the creation of the map.



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1 Q. Well, let's pull up the stat pack.

2 MR. FREEDMAN: Troy, can you pull up Joint  
3 Exhibit 6.

4 BY MR. FREEDMAN:

5 Q. Senator, you have on the screen before you Joint Exhibit  
6 6, which is referred to as the stat pack. You've seen this  
7 document before, right?

8 A. I have.

9 Q. This was provided to legislators after the map was  
10 released on October 18th, right?

11 A. Yes.

12 Q. And a public version of the stat pack -- I'm sorry. A  
13 version of the stat pack was made available to the public,  
14 right?

15 A. It was published on our website, yes.

16 Q. Now, the stat pack contains electoral outcomes of over 20  
17 races, right?

18 A. Yes.

19 Q. I think at your deposition you counted 24 and Mr. Jones,  
20 who was taking your testimony, counted 23; do you recall that?

21 A. I do.

22 Q. I'm going to go with the graduate of the North Carolina  
23 High School of science and mathematics on that one so we'll  
24 say it's 24.

25 You'd agree that the set of statewide elections in the

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1 stat pack was pretty comprehensive, right?

2 A. Yes.

3 Q. The stat pack that we're looking at includes the Black  
4 Voting Age Population or BVAP for each of the districts in the  
5 2023 map, right?

6 A. Yes.

7 MR. FREEDMAN: Troy, let's go to page 13 of the PDF.  
8 Do you guys need a copy?

9 MR. STRACH: I'm good.

10 BY MR. FREEDMAN:

11 Q. Sir, you can see here that there are various counts and  
12 percentages of the Black population of each Senate district on  
13 the 2023 map, right?

14 A. Through District 48, but yes.

15 Q. I apologize. That's good enough for our purposes for the  
16 part of the state we're talking about.

17 And you can see that for Senate District 1 in the  
18 rightmost column the percentage of any part Black for voting  
19 age population was 29.49 percent, right?

20 A. That is correct.

21 Q. That number was in the stat pack?

22 A. It was.

23 Q. And the row directly below that, you can see that for the  
24 Senate District 2 in the rightmost column, the percentage of  
25 any part Black for Voting Age Population was 30.01 percent,

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1 right?

2 A. Yes.

3 Q. That was also in the stat pack?

4 A. It was.

5 Q. You would agree, sir, that it's been a historical reality  
6 for all of your life that Black voters vote in large  
7 percentages for Democratic candidates, right?

8 A. With varying exceptions, yes.

9 Q. You would agree that in almost every presidential  
10 election that Black voters support Democratic candidates at  
11 extremely high rates, like 96 percent basically across the  
12 board, right?

13 A. That has been true for my lifetime.

14 Q. Sir, are you familiar with the policy platform of the  
15 North Carolina Republican Party?

16 A. I am.

17 MR. FREEDMAN: Troy, can we pull up Plaintiffs'  
18 Exhibit 222?

19 MR. STRACH: Your Honor, I'm going to object to this  
20 in that I believe it exceeds the scope of the direct under  
21 Rule 611.

22 THE COURT: Well, I'll see what the next question  
23 is.

24 BY MR. FREEDMAN:

25 Q. It's simply have you seen this before?

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1 A. I have. Not the graphic, but I've seen the platform.

2 Q. We'll move on.

3 MR. FREEDMAN: Troy, let's go back to the stat pack,  
4 and I want to turn to the electoral outcomes analysis.

5 BY MR. FREEDMAN:

6 Q. Let's go to page 27 of the PDF. Sir, just baseline  
7 question about the stat pack information conveyed. The  
8 numbers required here are not estimates, they're in the actual  
9 report of how many votes each candidate received in the  
10 elections depicted, right?

11 A. Because District 1 and 2 are whole counties, that is  
12 correct, these are based on -- those VTDs were split, there is  
13 some question as to how those were proportionally divided.

14 Q. Thank you for that clarification. So for Districts 1 and  
15 2, the numbers that are presented in the stat pack are the  
16 actual vote counts?

17 A. Correct.

18 Q. And for the race we're looking at, which is the 2022 U.S.  
19 Senate race, the report shows that in Senate District 1 using  
20 the 2022 Senate election results the Republican candidate gets  
21 56.39 percent and the Democratic candidate gets 41.19 percent  
22 of the vote, right?

23 A. Yes.

24 Q. And you understand that in Senate District 1 the  
25 Republican, Ted Budd, was a candidate preferred by the

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1 majority of White voters, right?

2 A. For that district specific he received -- the percentages  
3 are higher. I don't have any numbers as to what percentages  
4 of White voters supported Ted Budd off the top of my head.

5 Q. Sir, do you recall when you were asked in deposition  
6 whether you understood that in Senate District 1 Ted Budd, the  
7 Republican, was the candidate preferred by majority White  
8 voters you responded, "That was the analysis provided, yes"?

9 A. So for District 1, that is correct.

10 Q. Okay. And you understand that in Senate District 1 Cheri  
11 Beasley, the Democratic candidate, was the candidate preferred  
12 by a majority of Black voters, right?

13 A. Yes.

14 Q. And the stat pack shows that in the 2022 U.S. Senate  
15 election results, the White-preferred candidate, Ted Budd,  
16 defeated Cheri Beasley, the Black-preferred candidate, by a  
17 margin of just over 15 percent?

18 A. I do believe that's correct, yes.

19 Q. Now, if we go down to the next line to District 2 under  
20 the 2022 U.S. Senate election results, Ted Budd, who was the  
21 candidate preferred by White voters, gets 57.94 percent of the  
22 vote and Cheri Beasley, who was the candidate preferred by  
23 Black voters, gets 40.12 percent; do you see that?

24 A. I do.

25 Q. So according to this stat pack for District 2 using the

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1 U.S. Senate election results, the White-preferred candidate  
2 defeats the Black-preferred candidate in District 2 by a  
3 margin of over 17 percent, right?

4 A. Correct.

5 Q. Let's move on to the next race.

6 MR. FREEDMAN: Troy, can you go to page 29 of the  
7 PDF.

8 BY MR. FREEDMAN:

9 Q. So this is the -- this is North Carolina Supreme Court  
10 Associate Justice race between Justice Dietz and Justice  
11 Inman. And you can see in Senate District 1, Justice Dietz,  
12 who was the candidate preferred by the majority of the White  
13 voters gets 57.79 percent and Justice Inman, who was the  
14 candidate preferred by Black voters, gets 42.21 percent, do  
15 you see -- right?

16 A. Yes.

17 Q. Meaning the Black-preferred candidate loses to the  
18 White-preferred candidate in District 1 by a margin of over 15  
19 points?

20 A. Correct.

21 Q. And if we go down to Senate District 2, you see that the  
22 margin, the White-preferred candidate, Justice Dietz, defeated  
23 the Black-preferred candidate by a margin of over 19 percent,  
24 right?

25 A. Correct.

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1 Q. Okay. Now, I don't want to belabor this by going through  
2 a lot of races, but you understand then that in each and every  
3 of the 24-some races reflected in the stat pack, in each of  
4 those races the candidate preferred by a majority of White  
5 voters defeated the candidate preferred by a majority of Black  
6 voters in Senate District 1 every time?

7 A. The Republican candidate defeated Democratic candidate in  
8 every one of those, yes.

9 Q. And the same is true of District 2, right?

10 A. Yes.

11 Q. Let's turn to the Southern Coalition for Social Justice.

12 MR. FREEDMAN: Troy, can you pull up PX1 79.

13 BY MR. FREEDMAN:

14 Q. You've seen this letter before?

15 A. I have.

16 Q. You reviewed this letter before the maps were passed on  
17 October 25th, correct?

18 A. Yes.

19 Q. Let's move back to Dr. Oskooii's analysis on page 6 of  
20 the PDF. This is the first page of the report by Dr. Oskooii.

21 You reviewed Dr. Oskooii's report, correct?

22 A. We did, yes.

23 Q. And you had no concerns about Dr. Oskooii's expertise,  
24 did you?

25 A. Unaware. We took the information. We did not do an

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1 in-depth comparison to what qualified him.

2 Q. Do you recall testifying in your deposition that you had  
3 no concerns about his expertise?

4 A. I did not have any concerns, no.

5 Q. And you had no agreement with Dr. Oskooii's methodology,  
6 right?

7 A. No.

8 Q. I'm sorry. Just so it's clear. Did you have a concern  
9 about Dr. Oskooii's methodology?

10 A. It is what it is. His methodology he used shows what the  
11 methodology shows. Whether or not that ultimately leads to a  
12 conclusion that there were legally significant racially  
13 polarized voting or it was more than the preliminary analysis  
14 that he claimed it to be, his methodology created what it  
15 created.

16 Q. You didn't have -- did you have any basis to disagree  
17 with Dr. Oskooii's calculations?

18 A. I have not seen anything in the calculations that  
19 determined that they were inaccurate.

20 Q. Let's move on to page 9 of the PDF and do a split screen  
21 with page 10. This is -- I want to focus on Dr. Oskooii's  
22 executive summary.

23 Let's start with point A at the bottom of what's labeled  
24 here as page 4. Dr. Oskooii writes that he's identified  
25 definitive evidence of RPV patterns. This is starting



## R. Hise - Cross-Examination

1 mid-sentence, so the third line down. I have identified  
2 definitive evidence of RPV patterns in SLDs 1 and 3 of the  
3 enacted map and SLDs 1 and 2 of the proposed map, right?

4 You understand that by SLDs he's referring to the  
5 northeast part of the state?

6 A. He's referring to what was historically Senate Districts  
7 1 and 3 and then the new map Senate Districts 1 and 2.

8 Q. Now, turning to point four at the top of page 10, PDF  
9 page 10, this is the fifth page of the report. Dr. Oskooii  
10 writes, "Specifically, Black voters in each SLD vote  
11 cohesively such that a large majority of them favor the same  
12 candidates across 27 general election contests."

13 That observation is consistent with your understanding  
14 that a majority of Black voters would favor the same  
15 candidates across elections, right?

16 A. From the elections that we looked at that were available  
17 in the stat pack, the majority of minorities had favored  
18 Democratic candidates in all the races.

19 Q. So this is consistent with what you observed in the stat  
20 pack?

21 A. Outside of how I would apply cohesively, but the basic  
22 conclusion is that the majority of Blacks within those  
23 districts had voted for all of the Democratic candidates in  
24 our stat pack analysis.

25 Q. Now, going down to his next point, point C, Dr. Oskooii

## R. Hise - Cross-Examination

1 writes, "White voters in each SLD -- I'm sorry. Strike that.  
2 Let me start again.

3 "White voters in each SLD engage in bloc voting such that  
4 a large majority of White voters favor their own set of  
5 candidates." Let me pause there.

6 You would agree that in Senate Districts 1 and 2, White  
7 voters have favored Republican candidates across a group of  
8 elections, right?

9 A. Yes, I agree with that portion.

10 Q. And looking at the rest of point C, Dr. Oskooii writes,  
11 "The candidates favored by a large majority of White voters in  
12 each SLD are different than and ran against those favored by  
13 Black voters."

14 You would agree that a majority of White voters in Senate  
15 Districts 1 and 2 favor the Republican candidate and majority  
16 of Black voters in those districts favor the Democratic  
17 candidate?

18 A. I would.

19 Q. Now, turning to point D. Dr. Oskooii writes, "Electoral  
20 performance results shows that White voters are able to vote  
21 in sufficient quantities to defeat any of the Black-preferred  
22 candidates in SLDs 1 and 2 of the 2023 proposed map," and I'll  
23 stop there.

24 You agree with that statement?

25 A. Neither of those districts are majority-Black districts.

## R. Hise - Cross-Examination

1 So in any district that was a majority-Black district, that  
2 would be true.

3 Q. I just want to pull up PX222 again. I had one more  
4 question about that. This is the platform.

5 My question is simply, does this -- front page is fine.  
6 Does this document reflect the policy positions of the North  
7 Carolina Republican Party?

8 A. The platform is adopted every two years by the Convention  
9 of the North Carolina Republican Party. I've been part of  
10 almost all of those, assuming they get to the Platform  
11 Committee, sometimes it just gets carried over from the  
12 previous year, and it represents the majority of that body  
13 that approves it.

14 Q. Sir, I just want to wrap up. I have a few things I just  
15 want to make sure I understand your position.

16 You had your legislative staff put together a stat pack  
17 that reflected 24 separate statewide elections and every one  
18 of those elections Black-preferred candidates lost in Senate  
19 District 1 and Senate District 2, right?

20 A. In every one of those Republican candidates won;  
21 Democratic candidates lost.

22 Q. And in your response to your call for the public to  
23 submit evidence in response to your request for evidence of  
24 racially polarized voting, you received a letter from the  
25 Southern Coalition for Social Justice with a 20-page report

## R. Hise - Cross-Examination

1 specifically flagging that the Senate map would unlawfully  
2 dilute the voting strength of Black voters in northeast North  
3 Carolina in Senate Districts 1 and 2 in violation of the VRA,  
4 right?

5 A. That was their claim.

6 Q. And your position, that was not sufficient evidence,  
7 right?

8 A. Correct.

9 Q. Because your view is that the only valid evidence that  
10 there's legally significant racially polarized voting is a  
11 determination by a court, right?

12 A. The final determine -- again, I will say the final  
13 determination of those has always been from the court system.

14 Q. At the time of a redistricting, before any map is passed  
15 and before any lawsuit is filed in any court, do you believe  
16 that the General Assembly itself has an independent obligation  
17 under the Voting Rights Act to determine whether there's a  
18 legally significant racially polarized voting which would  
19 require the creation of a minority opportunity district?

20 A. We -- at this point I think the answer to that is no. We  
21 have had multiple occasions where we have submitted evidence  
22 to the court, so racially polarized voting going back to the  
23 2011 maps and ultimately the court has found that those  
24 conditions were not met.

25 Q. So until a court tells you that there is legally

## R. Hise - Redirect Examination

1 significant racially polarized voting, you don't believe that  
2 the General Assembly has any obligation to determine whether  
3 there is racially polarized voting?

4 A. As to this point, the courts have told us that there is  
5 not for particular areas of the state.

6 Q. The General Assembly has, in effect, outsourced any legal  
7 obligation it has to determine whether its redistricting maps  
8 are in compliance with the Voting Rights Act to the courts,  
9 that's what the General Assembly has done here, right?

10 A. We defer to the previous rulings of the courts and  
11 recognize that they are the arbiter of that decision.

12 MR. FREEDMAN: I have no further questions. I do  
13 want to move PX222 into evidence.

14 THE COURT: All right. It'll be received.

15 (Plaintiffs' Exhibit No. 222 was admitted into evidence.)

16 THE COURT: Anything else, Mr. Strach?

17 MR. STRACH: Just one thing, Mr. Honor.

## REDIRECT EXAMINATION

18  
19 BY MR. STRACH:

20 MR. STRACH: If we can pull up Senator Hise's  
21 deposition. It's the September 16th, 2024, deposition, volume  
22 one. Go to page 120.

23 BY MR. STRACH:

24 Q. Senator Hise, do you see that in front of you?

25 A. I do.

## R. Hise - Redirect Examination

1 Q. Counsel was just asking you about your deposition at  
2 page 119; do you recall that?

3 A. I do.

4 Q. This is page 120, the next page. I want to focus you on  
5 line 2. The question you were asked at your deposition was:  
6 "And specifically if you ignore, if you set aside the county  
7 groupings rule and just start with a clean map, you believe it  
8 is likely possible, though you haven't done it, to construct a  
9 Senate district in the northeast with a majority-Black  
10 population?"

11 And what was your answer at line 9?

12 A. It is, "Yes, if you ignore those as well as ignoring  
13 municipal boundaries, VTDs and others, you could do so."

14 MR. STRACH: Thank you, Your Honor. That's all we  
15 have.

16 THE COURT: Thank you, Senator. Just watch your  
17 step stepping down. There's a step up as you come off the  
18 witness stand and a step down through the gate.

19 The Defendants may call their next witness.

20 MS. McKNIGHT: Good morning, Your Honor. Kate  
21 McKnight for Legislative Defendants. Next we call Dr. John  
22 Alford to the stand.

23 THE COURT: Watch your step, sir. There's a step  
24 down.

## J. Alford - Direct Examination

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JOHN ALFORD,

having been duly sworn, testified as follows:

MS. McKNIGHT: Your Honor, may we approach the witness with a witness binder?

THE COURT: Good morning, Doctor.

Whenever you're ready, Ms. McKnight.

MS. McKNIGHT: Thank you very much, Your Honor.

DIRECT EXAMINATION

BY MS. MCKNIGHT:

Q. Dr. Alford, could you please state your full name for the record.

A. It's John Richard Alford.

Q. Are you serving as an expert witness in this matter?

A. Yes, I am.

Q. Dr. Alford, would you please turn to what's marked as Legislative Defendants' Exhibit 59.

A. Yes.

Q. What is this document?

A. It is a copy of my expert report in this case.

Q. Dr. Alford, could you turn to what is page 31 in this document? It's not marked, but it's the 31st page in this document. It's Appendix B.

A. Yes.

Q. Is this your CV?

1 A. It is.

2 Q. Do you have any updates to it?

3 A. I believe I have an additional court case that I'm  
4 involved in related to the Umbalias D North of Houston. Other  
5 than that, it's up-to-date.

6 Q. Thank you. Can you describe your educational background  
7 at a high level?

8 A. I have a Bachelor's of Science in Political Science from  
9 the University of Houston; a Master's of Public Administration  
10 from the University of Houston; a Master's in Political  
11 Science from the University of Iowa; a Ph.D. from the  
12 University of Iowa in Political Science with a focus on  
13 American Elections and Voting Behavior, Public Policy, and  
14 Political Science Methodology.

15 Q. Where are you currently employed?

16 A. At Rice University in Houston, Texas.

17 Q. How long have you taught there?

18 A. Coming up on 40 years.

19 Q. Are you a full professor?

20 A. I am.

21 Q. Does that mean you're tenured?

22 A. I actually was brought to Rice with tenure, so I've been  
23 tenured the entire time I've been at Rice.

24 Q. Have you ever taught about the Voting Rights Act?

25 A. Yes.



1 Q. Have you ever taught about redistricting?

2 A. Yes.

3 Q. Have you taught in the field of social science  
4 methodology?

5 A. Yes.

6 Q. Does that include teaching about statistical analyses?

7 A. Yes.

8 Q. Have you previously served as an expert witness in  
9 redistricting cases?

10 A. Yes, I have.

11 Q. About how many?

12 A. I'd say more than 30, maybe 40, 50 cases.

13 Q. Okay. And how many times have you testified in  
14 redistricting cases?

15 A. Live court testimony, maybe 30 times.

16 Q. Have you offered opinions in redistricting cases about  
17 racially polarized voting analyses?

18 A. Yes, I have.

19 Q. Have you ever been excluded as an expert?

20 A. I have not.

21 Q. Have any of your opinions been excluded?

22 A. I think sometimes they have been ignored, but they  
23 haven't been excluded, I think.

24 Q. Has your methodology ever been held to not be reliable?

25 A. No.

## J. Alford - Direct Examination

1 MS. McKNIGHT: Your Honor, I'd like to move to  
2 qualify Dr. Alford in the areas of voter cohesion and  
3 polarization as well as voting behavior and redistricting.

4 THE COURT: Okay. He may testify.

5 MS. McKNIGHT: I'd also like to at this time move  
6 for the admission of his report at Legislative Defendants'  
7 Exhibit number 59.

8 THE COURT: It'll be received.

9 (Defendant's Exhibit No. 58 was admitted into evidence.)

10 BY MS. McKNIGHT:

11 Q. Thank you. Dr. Alford, let's start on page 2 of your  
12 report. This is LD59 at page 2. What were you asked to do in  
13 this case?

14 A. I was asked to provide analysis related primarily to  
15 Gingles II and III, so broadly racially polarized voting and  
16 to be responsive to Plaintiffs' expert Dr. Collingwood.

17 Q. At a high level, can you summarize your findings?

18 A. I would say that Dr. Collingwood and I agree on the basic  
19 data and the basic election patterns. I believe the evidence  
20 provided here by Dr. Collingwood clearly shows partisan  
21 polarized voting, but I don't think it shows that the  
22 polarization is related to race.

23 Q. And did you come to any conclusions about White crossover  
24 voting?

25 A. There is substantial White crossover voting particularly

1 relative to Black crossover voting, which would allow  
2 districts to perform for -- that is to provide support,  
3 majority support for Democratic candidates below 50 percent  
4 Black population.

5 Q. Let's turn to page 3 of your report. What did you review  
6 in order to prepare your report?

7 A. I primarily focused on the report provided by  
8 Dr. Collingwood as well as the disclosed data and  
9 methodological information, his EI results.

10 Q. What data did you rely upon to inform your opinions?

11 A. The data that was provided by Dr. Collingwood, as well as  
12 the results provided by Dr. Collingwood.

13 Q. And did you hear Dr. Collingwood's testimony about his  
14 approach to ecological inference?

15 A. Yes, I did.

16 Q. Do you differ in any way in your view of that type of  
17 analysis?

18 A. With regard to what he did in this case, we both I think  
19 agree on the appropriate methods and -- and I believe his  
20 methodology was applied pretty much the same way I would have  
21 done this had I been starting one at fresh. So I don't think  
22 we have a disagreement about the type of EI analysis or the  
23 appropriateness or the appropriate data.

24 Q. Okay. Let's turn to page 5 of your report, a section  
25 titled "General Election Analysis." Do you see that?

1 A. Yes.

2 Q. I see reference to you using Dr. Collingwood's EI results  
3 to perform your own analysis. Why did you do that?

4 A. So first made sure that I could replicate the results,  
5 which I could, so there are no substantive differences between  
6 what I got independently and what Dr. Collingwood had  
7 produced.

8 Once I was confident that that was the case, it's  
9 generally been my practice, whenever possible, to base my  
10 analysis on the plaintiffs' expert's analysis so that the  
11 Court is not faced with sort of dueling analysis, trying to  
12 make a decision based on whose analysis. I'm accepting,  
13 endorsing Dr. Collingwood's EI analysis and my conclusions are  
14 all based on that, again, having assured myself that there was  
15 not some error in his analysis. I just think it's -- makes  
16 more sense to agree on what you can agree on.

17 Q. Thank you, Doctor.

18 Let's turn to page 6 of your report to a section titled,  
19 "A comparison of three U.S. Senate elections." Do you see  
20 that?

21 A. I do.

22 Q. And it says: A comparison of three U.S. Senate elections  
23 2016, 2020, and 2022.

24 A. Yes.

25 Q. Why did you analyze these three elections?

1 A. So what I wanted to do was to bring together the results  
2 produced by Dr. Collingwood that are -- some of which are in  
3 figures, someone of which are in tables, some are in the  
4 appendix, and to bring them together in a single table to make  
5 it easy to see sort of comparatively what the results look  
6 like across elections, as well as across the four areas that  
7 he performed the analysis.

8 In this case, what I'm doing is trying to focus on sort  
9 of a comparable set of elections in the sense that they are  
10 all from the same office. So these are all U.S. Senate  
11 elections, that means they're all top of the ballot, high  
12 profile races, the candidates that tend to spend money and so  
13 forth. So that allows us to say that these races are roughly  
14 comparable in terms of their position on the ballot and the  
15 likelihood of where they would be in terms of voter turnout  
16 and voter information.

17 Q. And since this is the first time we're seeing a table  
18 like this, I'd like to ask you some questions about how --  
19 what the information is it's showing. Could I start by  
20 asking, is it right to see that there is two sections of this  
21 table, the top section compares contests where both candidates  
22 were White and the bottom section looks at elections where  
23 there was a candidate who was Black and a candidate who was  
24 White?

25 A. That's correct. So my main sort of comparative focus

1 here in addition to providing the results in a more focused  
2 way, is to make the comparison between the nonracially  
3 contested elections and the racially contested elections.

4 So courts I think correctly and experts have viewed  
5 racially contested elections is more probative provides a  
6 clearer focus for racial sentiments, and so I'm basically  
7 contrasting those two types of elections in this table and  
8 throughout my analysis.

9 Q. And what does this table show as far as the results for  
10 your comparison of racially contested elections as compared to  
11 nonracially contested elections?

12 A. So just sort of briefly, because all the tables are  
13 organized this way. What you see on the left is the  
14 information about the year of the contest, the candidates'  
15 names, the party of the candidate, and the race of the  
16 candidate. So we have the information about the nature of  
17 each individual contest is on the left side. We then have, in  
18 a nice compact form, Dr. Collingwood's EI results for a  
19 particular reason. So statewide we have his results for the  
20 share of the vote. He estimated Black voters gave to each of  
21 the candidates; the share of the votes White voters gave to  
22 each candidate. That is followed by exactly the same pair of  
23 results for the demonstration area, the 12-county and for  
24 Senate District 1 and enacted Senate District 2.

25 We can look down those -- I think it's useful to look

1 kind of down the rows to see, first of all, that the results  
2 are quite stable across these contests; that we're moving from  
3 2016 to 2022, different candidates in the elections,  
4 presumably different dynamics, but we can see that both the  
5 degree to which Black voters support the Democratic candidate  
6 is quite stable down the table and the degree to which White  
7 voters support the Republican candidate or crossover to  
8 support the Democratic candidate is also very stable. So  
9 we're seeing very dependable patterns going down the columns.

10 And then finally, when we look at the average support for  
11 the Democratic candidate in the White-versus-White contest and  
12 compare that to the -- one racially contested contest, we can  
13 see that the share of the -- Black support, for example, for  
14 average Black support for White candidates is 97 percent, for  
15 the Black candidates is 96 percent. Average crossover  
16 statewide for White candidates, 25 percent among White voters  
17 and 30 percent for the Black candidate in 2022.

18 We can do that same comparison, then, for the  
19 demonstration area in District 1 and 2. So it let's us see is  
20 there -- do voters behave differently. There are two pieces  
21 of information here that we can evaluate. Do voters behave  
22 differently with regard to the party affiliation on the ballot  
23 of the candidates; and second, do voters behave differently,  
24 both Black voters and White voters, relative to the race of  
25 the candidates.

1 Q. Okay. So in this chart it looks like on average in SD1,  
2 the White Democratic candidate garnered 19 percent of the  
3 White vote, and on average the Black Democratic candidate  
4 garnered 20 percent of the White vote; is that the correct  
5 read?

6 A. Yes, it is.

7 Q. And we'll highlight those just so we can follow along.

8 And then two -- two columns over, is it right to say that  
9 on average in SD2, the White Democratic candidate garnered  
10 17 percent of the White vote, and on average the Black  
11 Democratic candidate also garnered 17 percent of the White  
12 vote?

13 A. That's correct.

14 Q. And from my read of this chart, it looks like there's  
15 more White crossover voting in District 1 and District 2 as  
16 compared to the demonstration area; is that the correct read?

17 A. That's correct. So two things that are true about that  
18 throughout this analysis we'll see it repeated: One is  
19 typically the highest level of crossover is statewide.  
20 Slightly lower than statewide would be Districts 1 and 2, and  
21 markedly lower crossover voting in the demonstration area.

22 Q. So going back to these figures of comparing the  
23 White-versus-White average in District 1 and 2 to the average  
24 for the Black Democratic candidate in District 1 and District  
25 2, what do these similar numbers tell you about what the



1 racial cue of the candidate, how that affects voter choice  
2 among White voters?

3 A. Well, it tells us that the racial cue is not impacting in  
4 any significant way the behavior of White voters with regard  
5 to crossing over for the Democratic candidate.

6 And it's important to sort of put in -- I think to keep  
7 in perspective, the table also tells us about the impact of  
8 party. So we do see that there's a very substantial  
9 difference with regard to the impact of party.

10 So party is Democratic candidates are getting almost  
11 100 percent of the Black vote and only about 20 percent of the  
12 White vote. So White voters are favoring Republican  
13 candidates, and that's a pretty dramatic difference by party  
14 and very durable across the table. Then we contrast that and  
15 say, well, what about the difference when we alter the race of  
16 the candidate? Again, that's a signal that voters have,  
17 certainly not written on the ballot, but particularly in a  
18 high profile contest, I suspect voters -- most voters are  
19 aware of that. That signal simply doesn't move the -- the  
20 behavior of either Black voters or White voters.

21 So there's quite a contrast between the impact of the  
22 party affiliation of a candidate and the impact of the race of  
23 the candidate.

24 Q. So briefly, what would we see if voters were responding  
25 to the race of the candidates instead of their party

1 affiliation?

2 A. Well, we might first -- we might expect that Black  
3 voters, for example, would give less support to a White  
4 Democrat than they would to a Black Democrat, so that if the  
5 race of the candidate was important for Black voters, we --  
6 that might be exactly what we expect to see; and if race of  
7 the candidate is important to White voters, we would expect  
8 White voters to be more willing to crossover and support a  
9 White Democrat than it would be to crossover and support a  
10 Black Democrat.

11 Q. Let's turn to page 7 of your report. This is in Section  
12 B, a comparison of seven state Supreme Court elections. Do  
13 you see that?

14 A. Yes.

15 Q. Now your report is submitted as evidence in this matter.  
16 So I'll work to go over highlights and any exceptions as we  
17 work through these later tables.

18 Is it fair to understand that all of the Tables 1 through  
19 7 in your report work the same way, show the same type of  
20 information as a result of your analysis?

21 A. Yes. Everything is structured the same way. Again, all  
22 of the numerical information in the tables is -- are the  
23 estimates from Dr. Collingwood; they are not my estimates.  
24 Presented here just in a form that makes it easier to make the  
25 comparison and with some minor exceptions at the bottom of the

1 tables, which I think we'll get to in this table, the basic  
2 format is the same.

3 Q. And I see in this table, am I reading correctly that  
4 White crossover voting in District 1 for White-versus-White  
5 candidates is 21 percent?

6 A. That's correct.

7 Q. And in that same district White -- pardon me. I  
8 described that as White crossover voting. It is White cross  
9 overvoting. Pardon me, Dr. Alford.

10 That same voting, when the candidate, Democratic  
11 candidate is Black increases to 23 percent; is that correct?

12 A. That's correct.

13 Q. And in District 2, are you seeing White crossover voting  
14 in a White-versus-White contest as being 17 percent?

15 A. That's correct.

16 Q. And then White crossover voting where the candidate --  
17 the Democratic candidate is Black, that White crossover voting  
18 increases two percent to 19 percent; is that the correct read?

19 A. That's correct.

20 Q. These are estimates, right?

21 A. These are not just estimates, but they are ecological  
22 estimates. So we have to be cautious about -- they give us  
23 some fairly -- particularly in North Carolina where you have  
24 registration by race, there as good an estimate as we can get  
25 out of an ecological inference, but I think we have to be

1 careful or cautious about their precision.

2 In this particular case, if you -- if I were asked: Do I  
3 think this shows that crossover voting is actually higher for  
4 Black versus White candidates? I don't think I would conclude  
5 that. Differences of a percentage point or two in one  
6 direction or the other, that's a distinction we can't really  
7 make with ecological estimates.

8 Q. Okay. But can you make the conclusion that they are  
9 roughly identical, the crossover voting levels, as White  
10 versus White and Black versus White?

11 A. Yes, that would be exactly my conclusion, that they're  
12 essentially equal.

13 Q. Thank you. Now, was there anything significant about the  
14 2016 Supreme Court contest identified at the bottom of this  
15 chart?

16 A. Yes. I think it's a very important contest. It is --  
17 again, it's a Supreme Court contest so we're holding the  
18 contest constant. And what's different is, is that it's the  
19 last contest that was under the old nonpartisan system. So it  
20 is a contest where there is not a Democrat and Republican  
21 indication on the ballot itself. So it's nonpartisan. It  
22 doesn't mean that the two candidates may not have been  
23 partisans, but it's not available for the voter on the ballot,  
24 a Democrat and a Republican.

25 This is what we might think of as kind of a natural

1 experiment. What happens if we remove that information? So  
2 it seems fairly clear to me from the tables and the stability  
3 of the results, that party is driving a very stable, very high  
4 level of Black voting for Democratic candidates and a very  
5 stable, somewhat lower level of support among White voters for  
6 up Republican candidates. But those items are always on the  
7 ballot. And so one way of testing something like this is to  
8 take that information away and see what happens.

9 If, in fact, the party is really somehow not the real  
10 factor here but other things are driving it, then we would  
11 expect these to look pretty much like what we see in the top  
12 of the table. If party is a really important factor and we  
13 take it out, we'll see a different world, a different voting  
14 behavior emerge, and that's exactly what we see here. Black  
15 voters support for the Black candidate. It's still  
16 substantial at 75 percent, but it -- that's almost 25 percent  
17 below what it is for any Democratic candidate in any of the  
18 other contests, so there's a substantial drop.

19 In fact, 25 percent of Black voters are crossing over and  
20 voting for the non-preferred candidate, and then a much more  
21 dramatic effect on White voters.

22 So the White voters tendency to vote differently than  
23 Black voters in a partisan contest to vote Republican rather  
24 than Democrat simply disappears. There's -- the voting is  
25 basically -- basically roughly randomly split between the two

1 candidates. So the White vote becomes completely  
2 non-cohesive. There's simply no cohesion at all here in the  
3 White vote with regard to the two candidates.

4 Again, that's -- there's a Black candidate and a White  
5 candidate. And White voters are not showing a tendency to  
6 prefer -- while Black voters do show a reduced tendency to  
7 support the Black candidate in the absence of the Democratic  
8 label, White voters do not show any tendency to support the  
9 White candidate over the Black candidate that looks anything  
10 like what we see in the partisan contest.

11 Q. Okay. So just as a brief illustration, under District 1  
12 and District 2 in that 2016 contest, I'm seeing White  
13 crossover voting of 52 percent in SD1 for the Black candidate  
14 and I'm seeing it at 43 percent in SD2 for the Black  
15 candidate. Is that the correct read?

16 A. Yes.

17 Q. So what does this analysis tell the Court about the  
18 predictive impact of race of the candidates on the voting  
19 behavior of White voters in these districts?

20 A. Again, this is entirely compatible with what we see in  
21 the rest of the table. The rest of the table suggests that  
22 race of the candidate doesn't seem to be having any impact  
23 beyond the impact of party when we remove party for White  
24 voters, particularly there just not an impact. Race of the  
25 candidate is not structuring the vote of White voters in this

1 contest.

2 Q. Let's turn to page 8 through 10 of your report. This is  
3 a section titled, "A comparison of 17 State Appeals Court  
4 Elections." The table for this section is on page 10. I'm  
5 going to ask you some questions about that table.

6 This table is State Appeals Court Elections EI RPV  
7 Estimates from Collingwood's Appendix. Do you see that?

8 A. Yes.

9 Q. Are the results identified in this table consistent with  
10 the results that you found in Tables 1 and 2 in elections in  
11 this area of North Carolina?

12 A. Yes. Again, everything about the table is consistent.  
13 These are Dr. Collingwood's results. We have a lot -- this is  
14 the most common type of statewide contest in the period we're  
15 looking at. So we have a lot of elections here.

16 If -- you know, I think this is useful, because in one  
17 concern you might have about the U.S. Senate elections,  
18 there's only three of them. Only one that has iteration  
19 contested. Here we have multiple racially contested  
20 elections. We have multiple non-racially contested elections.

21 And, again, when we sum all this up, what we see is that  
22 the behavior of both Black voters and White voters is  
23 essentially identical when the candidate, the Democratic  
24 candidate is White and when the Democratic candidate is Black.

25 Q. Was there anything significant about the final contest in

1 Table 3, the 2020 Seat 5 contest?

2 A. That contest is not racially contested, but unlike the  
3 bulk of the non-racially contested contest that are  
4 White-versus-White contest, it's a contest where both the  
5 Republican and the Democrat are Black, so it's -- it doesn't  
6 belong -- I guess you could put it in -- you can think of a  
7 reason to put it in with the White-versus-White contest. You  
8 can think of a reason to put it in with the White-versus-Black  
9 contest, depending sort of on what you're focused on, but it  
10 is a different election contest. So I just brought it out  
11 separately.

12 But, again, what you see there is that this looks very  
13 much like the White-versus-White contest or Black-versus-Black  
14 contest and so you could see -- I mean, you can see, for  
15 example, if you just look at the -- at the average -- so  
16 the -- look at the White vote for the Republican candidates  
17 when the Republican in the White-versus-White contest or the  
18 White-versus-Black contest, and you can see that the support  
19 for, in this case, Fred Gore is a Republican who's Black and  
20 he's getting 75 percent of the statewide vote, 87 percent in  
21 the Demonstration Area, 80 in SD1 and 84 in SD2. Again, one  
22 of the things we might think of race was important is that  
23 maybe Republicans enthusiasm for Republican candidates is a  
24 function of the fact that the Republican candidates are White,  
25 but the support for Fred Gore is as high as the average



1 support for the White Republican candidates when the Democrat  
2 is White or White Republican candidates when the Democrat is  
3 Black. So, again, if race were important, we might think Fred  
4 Gore would get less White support as a Black Republican, but  
5 there's no evidence that that's the case.

6 Q. Thank you. Let's turn to Section D of your report that  
7 starts on page 11. I'm going to ask you questions about  
8 tables in the pages after this.

9 It's a section titled, "Elections for all offices by  
10 year," and it describes results for Tables 4, 5, 6, and 7. Is  
11 that right?

12 A. That's correct.

13 Q. And did you find that the results in Tables 4, 5, 6, and  
14 7 are similar to the results in Tables 1, 2, and 3?

15 A. Yes, they are.

16 Q. Let's look at Table 4 as an example. I'd like to ask you  
17 if there was any difference in these tables that you saw in  
18 the year 2016?

19 A. I'm sorry?

20 Q. Pardon me. I'd like to ask you questions about these  
21 tables. And starting with Table 4, but it's Tables 4 through  
22 7, I wanted to highlight if you saw any differences in the  
23 year 2016.

24 A. So something we see here. So now we're controlling for  
25 year and putting in all the contests. So in this set of

1 tables, we will see all 49 of the election contests that  
2 Dr. Collingwood analyzed.

3 Here, we're mixing together lots of different kinds of  
4 contests, top of the ballot, down ballot; but it does give us  
5 a picture of a year, a unique picture of a year. So while  
6 these are very different kinds of contests, they are the same  
7 voters, the same ballot, and the same context, right? So this  
8 is 2016, we know what the presidential context is and so  
9 forth.

10 One thing we see here is that unlike what we saw  
11 previously and what we see in the years after 2016, there is a  
12 slight tendency for the crossover vote, White crossover vote,  
13 to be a couple of percentage points higher in the  
14 White-versus-White contest compared to the Black-versus-White  
15 contest. So that is -- again, it's a small difference, but  
16 it's consistent across the geography and it's a difference  
17 that doesn't appear in later years and doesn't appear when we  
18 focus on the particular type of contest as in the earlier  
19 tables, but it is -- it is -- again, it is distinct to 2016.

20 And those are, again, the differences are small, a few  
21 percentage points. I don't think they're in the range that we  
22 can see for certain they're real given they're ecological  
23 inference estimates, but they -- at least the direction  
24 suggests a slight directional difference there.

25 Q. And that slight difference, does it disappear by 2018?

1 A. It does not appear in 2018, 2020, or 2022.

2 Q. Let's turn to page 15 of your analysis -- of your report,  
3 rather. This starts Section F, district performance. Do you  
4 see that?

5 A. Yes.

6 Q. Does this include your review of Dr. Collingwood's BVAP  
7 analysis?

8 A. Yes.

9 Q. Now, in the first paragraph of this section, what is your  
10 observation about district performance?

11 A. I think both in understanding sort of what the previous  
12 tables have told us and there's generally kind of a clarity  
13 here, the performance of districts in North Carolina for Black  
14 voters; that is, the ability of the district to elect the  
15 preferred candidate of Black voters, is simply the Democratic  
16 performance of the district. That Black voters are, according  
17 to Dr. Collingwood's analysis and I agree, voting  
18 overwhelmingly Democratic. And so the issue of performance in  
19 the district is simply is the district a district that  
20 Democrats can win; and if so, how frequently. So we're --  
21 that's really the focus here is about that.

22 And given that very high level of cohesion among Black  
23 voters, the variable that affects whether the district  
24 operates or not is some combination of the proportion Black in  
25 the district, and then beyond that it's being driven by the

1 level of crossover among White voters. So the proportion  
2 White voters that vote Democratic, that crossover vote, is  
3 really what's driving the performance of the district because  
4 there's just not any important variability in the proportion  
5 of Black vote for the Democratic candidate.

6 So that's -- I think it's important to recognize that's  
7 really what we're talking about here is whether the district  
8 is a Democratic district -- any Democratic district in North  
9 Carolina no matter what its Black composition will elect the  
10 preferred candidate of Black voters in that district and any  
11 Republican district will not. It's as simple as that.

12 Q. And what is your reaction to Dr. Collingwood's BVAP  
13 analysis as far as what level percentage of BVAP is necessary  
14 for a Black-preferred candidate to win in a district?

15 A. I'd say there are a lot of different ways to look at that  
16 analysis. I've never seen exactly this analysis before, but I  
17 think this -- his sort of bar chart analysis I think is  
18 broadly compatible with other ways of looking at this.

19 His way of looking at it and the -- I provide something  
20 that Dr. Baretto looked at as well as just thinking about the  
21 impact of the crossover level on the performance of districts.  
22 Everything is consistent. His bar chart table shows that the  
23 majority of those winning elections are well below 50 percent.  
24 And I think it's important to recognize that his bar chart  
25 table is a very sort of conservative estimate of what you

1 would need to make a district work because it's based on the  
2 demonstration area. And as we've seen on these tables, the  
3 demonstration areas --

4 MS. THEODORE: I'd just like to lodge an objection  
5 to this testimony, Your Honor, which was not disclosed in his  
6 report. There's no discussion in his report about the choice  
7 of Dr. Collingwood to use the demonstration area for this  
8 analysis.

9 BY MS. McKNIGHT:

10 Q. Dr. Alford, let's point to two areas of your report.  
11 First, am I correct to see on page 15, the second paragraph,  
12 that you determine that Dr. Collingwood agrees with Dr.  
13 Baretto's earlier conclusion that districts do not need to be  
14 50 percent plus Black to perform for Black voters?

15 A. That's correct.

16 Q. And then on page 16, do you see a discussion about a  
17 graph including a selection of demonstration area counties?

18 A. Yes.

19 Q. And do you see a reference to it's an idiosyncratic set  
20 of counties?

21 A. Yes.

22 MS. THEODORE: Your Honor, may I just respond that  
23 the reference to an idiosyncratic set of counties is a  
24 reference to Dr. Baretto, not to Dr. Collingwood. There is no  
25 disclosed opinion in this report about Dr. Collingwood's

1 choice of the area to analyze.

2 THE COURT: Was the reference to the last paragraph  
3 of 16, are we talking about the demonstration area?

4 MS. McKNIGHT: I was asking questions about page 15.  
5 His answer was talking about the unusual set of counties and  
6 so I was pointing where that was.

7 My question was related to this paragraph on 15. It  
8 seems like he was referring to some of his opinion in that  
9 later paragraph on 16.

10 THE COURT: Again, as I said before, I will  
11 undoubtedly study these reports even closer, and I will limit  
12 the opinions to what's in the report.

13 MS. McKNIGHT: Thank you, Your Honor.

14 THE COURT: That's what the rules say.

15 MS. McKNIGHT: I understand, Your Honor. Thank you.  
16 BY MS. McKNIGHT:

17 Q. And, Dr. Alford, I'll ask the questions and try to focus  
18 you in on the area of report that I'd like you to elicit your  
19 response from. Hopefully, that will clear up some of the  
20 friction here.

21 So on page 15, the second paragraph on page 15. Do you  
22 agree -- what did you find as far as what Dr. Collingwood and  
23 Dr. Baretto concluded about whether districts need to be 50  
24 percent plus Black to perform for Black voters?

25 A. It's clear from Dr. Collingwood's chart, again, 22 of the

1 29 elections would result in a Black-preferred candidate being  
2 elected at levels below 50 percent BVAP. So I think the only  
3 conclusion you can draw from Dr. Collingwood's somewhat  
4 unusual histogram approach, simulation approach, is that it's  
5 not required for a district to be at 50 percent BVAP to elect  
6 Black candidate of choice in this area.

7 Q. So now, I'm seeing in your report pages 16, 17, and 18  
8 reproductions of charts from Dr. Barreto; do you see those  
9 too?

10 A. Yes.

11 Q. What do these charts show?

12 A. The first chart is just literally Dr. Barreto's chart.  
13 It's a different set of counties, so I just updated that. So  
14 Figure 1 would be -- I'm sorry -- Figure 4 would simply be  
15 Barreto's chart, and page 17 is the same methodology but using  
16 the 12-county area that Dr. Collingwood is using.

17 And the graph here shows in sort of a much more detailed  
18 sense precisely the same relationship that Dr. Collingwood is  
19 producing in his histogram, so he blocks things together in a  
20 histogram. It's a very compacted sort of high-level analysis  
21 and here we're doing a more granular analysis. This is every  
22 precinct within the 12-county area and it, again, reflects  
23 both the percent BVAP in the precinct and the share of vote  
24 for the Democratic candidate; in this case, in the 2020  
25 Governor's election. So where the blue dots fall below the

1 red dots, those are precincts where the Republican candidate  
2 is winning; and where the blue dots are above the red dots,  
3 those are areas where the Democratic candidate is winning.

4       So if you think about this at the precinct level, you're  
5 seeing, again, the variation in the proportion Black and  
6 variation in the vote share for the Democratic candidate. And  
7 as Dr. Barreto's chart shows and this chart shows as well, the  
8 point at which they cross, which is the point at which you  
9 expect an equal vote share, is well below 40 percent; and by  
10 the time you get in that range from 40 to 50 percent BVAP,  
11 you're seeing essentially -- all of the precincts are showing  
12 success for the Democratic candidate, which would be the  
13 Black-preferred candidate.

14 Q.   Dr. Alford, I'd like to move on to some of your  
15 conclusions in this case. Considering what you saw in Dr.  
16 Barreto's report and Dr. Collingwood's report and in your own  
17 analysis, have you seen any evidence in this case that  
18 districts drawn in the northeast of North Carolina need more  
19 than 50 percent BVAP to perform for the Black-preferred  
20 candidate?

21 A.   No. All of the evidence shows clearly that districts  
22 below 50 percent clearly perform for Black-preferred  
23 candidates.

24 Q.   And from those same reports and analyses, did you reach  
25 any conclusion regarding whether voting is racially polarized



1 in North Carolina?

2 A. Yes. The voting in North Carolina clearly reflects  
3 polarization on the basis of the party of candidates, but not  
4 polarization of the basis of race.

5 Q. Thank you. I'd like to briefly touch on your summary  
6 conclusions on pages 18 and 19 of your report.

7 At the end of your first paragraph, the last sentence,  
8 could you read that conclusion, and I'll ask you a question  
9 about it? It starts with, "However, by adding."

10 A. "However, by adding that information to Dr. Collingwood's  
11 EI results, this was done for the tables above, it is clear  
12 that the empirical evidence shows that Black voters cohesively  
13 support Democratic candidates and the majority of White voters  
14 support Republican candidates."

15 Q. And as you sit here today, have you seen any evidence in  
16 this case, either in expert reports or testimony you've heard,  
17 that contradicts this conclusion?

18 A. No.

19 Q. Next, could you look at the first sentence in the next  
20 paragraph. Could you read that and then I'll ask you a  
21 question about it?

22 A. "In contrast it is not the case that Dr. Collingwood's  
23 election analysis supports the conclusion that Black voters  
24 cohesively support the Black candidates on account of race, as  
25 they are no more likely to support a Black Democratic

1 candidate than they are to support a White democratic  
2 candidate; and similarly, no less likely to oppose a Black  
3 Republican candidate than they are to oppose a White  
4 Republican candidate."

5 Q. And as you sit here today, have you seen any reports or  
6 evidence that contradict that conclusion?

7 A. No.

8 Q. And the very next sentence starting, "Similarly," can you  
9 read that and I'll ask you a question about that?

10 A. "Similarly, it is not the case that a majority of White  
11 voters regularly oppose Black candidates on account of race,  
12 as they are no more likely to oppose a Black Democratic  
13 candidate than they are to oppose a White Democratic  
14 candidate; and similarly, no less likely to support a Black  
15 Republican candidate than they are to support a White  
16 Republican candidate."

17 Q. And as you sit here today, Dr. Alford, have you seen any  
18 reports or evidence that contradict that conclusion?

19 A. No.

20 Q. And finally, Dr. Alford, the second to last sentence in  
21 the next paragraph, it starts with the phrase, "With addition  
22 of this candidate information," do you see that?

23 A. Yes.

24 Q. Could you read that and I'll ask you a question about it?

25 A. "With addition of this candidate information, the

## J. Alford - Cross-Examination

1 election analysis provided by Dr. Collingwood clearly  
2 demonstrates that the party affiliation of candidates best  
3 explains the divergent voting preferences of Black and White  
4 voters in North Carolina elections."

5 Q. As you sit here today, have you seen any reports or  
6 evidence in this case that contradicts that conclusion?

7 A. No, I have not.

8 MS. McKNIGHT: Thank you, Your Honor. I have no  
9 further questions.

10 THE COURT: Cross-examination.

11 MS. THEODORE: Thank you.

## CROSS-EXAMINATION

12  
13 BY MS. THEODORE:

14 Q. Good morning Dr. Alford. I'm Elisabeth Theodore. We  
15 virtually met at your deposition.

16 A. Yes.

17 Q. Dr. Alford, you testified in the Alpha Phi Alpha case in  
18 the Northern District of Georgia; is that right?

19 A. That's correct.

20 Q. And the analysis you conducted in that case relating to  
21 sort of the racial polarization versus political polarization,  
22 that's similar to the analysis you did here, is that fair to  
23 say?

24 A. Similar analysis, yes.

25 Q. Did I hear you testify on direct that a court has never

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1 found your testimony to be unreliable?

2 A. That's my belief, yes.

3 MS. THEODORE: Okay. Could we pull up the Alpha Phi  
4 Alpha opinion please.

5 BY MS. THEODORE:

6 Q. Do you recall that in the Alpha Phi Alpha case, the Court  
7 said that your, quote, "Conclusions were not reached through  
8 methodologically sound means and were therefore speculative  
9 and unreliable"?

10 A. I don't recall that, but I'd like to see the context of  
11 the --

12 Q. Do you recognize this as a decision in the Alpha Phi  
13 Alpha case?

14 A. That's what it suggests it is, yes.

15 Q. And do you see here that it says, "While the Court found  
16 Dr. Alford to be credible, his conclusions were not reached  
17 through method logically sound means and were therefore  
18 speculative and unreliable. Other courts have come to similar  
19 conclusions."

20 Did I read that correctly?

21 A. That's what -- again, looking at the full context of what  
22 you're saying here, I'm not sure exactly what the idea that --  
23 of methodology since it was not my -- these are not my  
24 findings. Again, I'm relying on the findings of the other  
25 expert.

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1 Q. And I'm just asking a very simple question which is: In  
2 this opinion the Court says that it found that your  
3 conclusions were not reached through methodologically sound  
4 means and were therefore speculative and unreliable; is that  
5 correct?

6 A. That's what this decision says.

7 Q. And the Court said that other courts have come to similar  
8 conclusions; is that right?

9 A. The Court says that other courts have come to similar  
10 conclusions, I don't think that -- I don't agree with that,  
11 but that's what the Court said.

12 Q. And one of those other courts was the Southern District  
13 of Texas; one of those other courts was the Lopez decision in  
14 the Southern District of Texas where the Court found that  
15 Dr. Alford's testimony focused on issues other than the  
16 ethnicity of the voters and their preferred candidates which  
17 are the issues relevant to Black voting -- one of those  
18 decisions was the Lopez versus Abbott decision from the  
19 Southern District of Texas where the Court found that  
20 Dr. Alford's testimony focused on issues other than the  
21 ethnicity of the voters and their preferred candidates which  
22 are the issues relevant to bloc voting; do you see that?

23 A. I do and -- could you help me here because there were a  
24 lot of Texas cases. Am I correct in remembering that Lopez v.  
25 Abbott is the case dealing with the election of Supreme Court

1 judges in Texas?

2 Q. All right.

3 A. I believe that's correct.

4 Q. Okay. And then in the Texas versus United States case  
5 quoted here, the Court critiqued your approach because you  
6 used an analysis that, quote, "lies outside accepted academic  
7 norms among redistricting experts;" is that right?

8 A. Yes. I just want to be clear that this is what I'm  
9 saying, I'm disagreeing here. First of all, in Lopez v.  
10 Abbott, the Court actually on the basis of my testimony  
11 decided that the at-large election of Supreme Court judges in  
12 Texas was legal because, in fact, my testimony showed that  
13 under the totality of the circumstances the voting was  
14 partisan rather than racially polarized. This section here  
15 focuses on whether that would apply to the Gingles analysis,  
16 not the totality of the circumstances.

17 So, in fact, the Court in its decision is relying on my  
18 testimony, but not relying on my testimony at the area of  
19 Gingles II. So, again, where the Court says focuses on issues  
20 other than the ethnicity of voters and preferred candidates,  
21 which are the issues relevant to bloc voting, they're  
22 specifically referring to Gingles III and not to totality of  
23 circumstances where they credit my testimony and base their  
24 decision in part on my testimony.

25 Q. All right. You, in general, conducted the analysis that

1 you offer in this case arguing that racially polarized voting  
2 simply reflects partisan polarized voting in many cases as an  
3 expert witness, correct?

4 A. Correct.

5 Q. And a number of courts have declined to credit your  
6 testimony on that topic; is that correct?

7 A. I would say -- I'm not sure what you mean, decline to  
8 credit the testimony. They decline as you see here both in  
9 the Lopez case to apply it to Gingles III; and there, it's a  
10 disagreement about what the phrase legally significant racial  
11 bloc voting means with regard to Gingles III. Does it mean  
12 the same thing it means with regard to the Senate factor of  
13 racially polarized voting or does it mean something more  
14 mechanical?

15 And as I testified in that court and in Georgia, if  
16 that's the way the law is interpreted that Gingles III is a  
17 mechanical test that ignores partisanship, then that's true;  
18 and if it's not, it's something different.

19 In the case of the -- this idea this lies outside  
20 accepted norms among redistricting experts, the idea that  
21 there's an academic norm among redistricting experts about the  
22 issue of whether you should consider partisanship versus -- I  
23 mean, I find this to be baffling. This -- this debate about  
24 partisanship versus race is as old as these redistricting  
25 cases and it goes through all these redistricting cases. And

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1 so I'm raising that issue and providing that testimony. If a  
2 judge says it doesn't apply in a Gingles III, then it doesn't  
3 apply in Gingles III. That's not discrediting, in my view, my  
4 testimony as it is here. What degree of difference does it  
5 make. Some cases it makes more difference than others. It  
6 made more difference in Louisiana than does North Carolina.

7 The judge's decision rightly so about whether this  
8 applies to Gingles III or totality or doesn't apply at all.  
9 Certainly what Justice Brennan would believe, that's the  
10 judge's decision. When a judge and I disagree about my view  
11 of what's legally significant racially polarized voting, I'm  
12 perfectly fine with that because I'm not a legal expert. But  
13 I don't think that judge is then impugning the methods. To  
14 argue that a result you don't like must be the result of a  
15 methodological flaw when it, in fact, comes from the analysis  
16 of the plaintiff's experts, I just think it's disingenuous.

17 I much prefer judges do, as most judges have in cases  
18 I've been involved in, where they just say, "I don't agree  
19 that it applies to Gingles," and end of story.

20 Q. Dr. Alford, do you recall giving a deposition in this  
21 case?

22 A. Yes.

23 Q. And you gave testimony in that deposition under oath; is  
24 that right?

25 A. Yes.



1 Q. And do you recall that I asked you: You conducted the  
2 analysis that you offer in this case arguing that racially  
3 polarized voting simply reflects partisan polarization in many  
4 cases as an expert witness; is that fair to say?

5 And you answered: Yes.

6 Do you recall that?

7 A. That sounds familiar.

8 Q. And then I asked you: And fair to say that a number of  
9 courts have declined to credit your testimony on that topic?

10 And you answered: That would be fair to say. That would  
11 be a polite way of saying that. Yes, I agree.

12 Do you recall that?

13 A. Yes. I think that's exactly what I'm saying here. They  
14 did not credit that testimony because they don't believe it  
15 makes any difference. It focuses on issues other than the  
16 ethnicity of the voters. Yes, it does, right? Because my  
17 analysis provides information about the ethnicity of the  
18 candidates which is obscured by the plaintiffs' experts, and  
19 despite the fact that the Court has said repeatedly that  
20 racially contested elections are very probative, experts  
21 simply don't provide that information to the court anymore.

22 So I'm providing information. No court has said that  
23 that information was produced incorrectly; that the analysis  
24 itself was incorrect. They simply don't apply that because  
25 they don't believe that it focuses on something they need to

1 know to make that decision. And I'm fine with that.

2 I just want to make sure when a court makes that  
3 decision, they don't make that decision under the belief that  
4 Dr. Collingwood's results show that Black voters strongly  
5 prefer Black candidates and White voters will not support  
6 Black candidates in North Carolina. That simply isn't true.  
7 And if it's not legally relevant, that's fine.

8 But I don't like the idea that we should simply not  
9 present that evidence so that we can feel more confident that  
10 when we tell people that voting is racially polarized  
11 illegally so in North Carolina that voters will understand  
12 that we're not saying that they are, in fact, unwilling to  
13 vote for Black candidates, since they obviously have and have  
14 elected Black candidates, or that there is evidence in the  
15 court record to suggest that their behavior is altered by the  
16 race of candidates.

17 It doesn't demonstrate -- my analysis doesn't demonstrate  
18 the absence of any racial voting; it just demonstrates that  
19 the plaintiffs' evidence does not provide any evidence. The  
20 plaintiffs provide no evidence that race is affecting the vote  
21 of the candidates here other than the fact that the votes are  
22 different by race.

23 And Dr. Collingwood, when asked about this, says, well,  
24 but this could just be a policy difference. I agree  
25 100 percent. I suspect these partisan differences reflect

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1 policy differences. But, again, if the Court believes that  
2 the policy preferences of Black Democrats are protected by the  
3 law of the Constitution and the policy preferences of White  
4 Democrats are not, then say so and do what you're going to do.  
5 But I think it's important to acknowledge that that's what  
6 we're talking about, the situation that caused the White --  
7 The Voting Rights Act to be passed. It was passed to deal  
8 with the fact that voting was, frankly, racist in North  
9 Carolina and throughout the United States.

10 And so race did matter, and they were hoping that by  
11 passing this we could move to an era in which something else  
12 would matter; maybe policy differences; maybe party  
13 differences, and we're in that era now.

14 The record -- the voting record in North Carolina in the  
15 last decade would not sustain the passage of the Voting Rights  
16 Act, unlike the voting record in North Carolina, South  
17 Carolina, Georgia, Texas, Alabama, Louisiana in 1960. We are  
18 in a different era, and pretending that that isn't true by  
19 covering up the column that shows what happens when candidates  
20 are Black versus candidates are White, whether they're  
21 Republicans or Democrats, is just trying to pretend that we're  
22 in the same era that the Voting Rights Act applied to, and  
23 we're not.

24 Q. Dr. Alford, did I hear you say that the Voting Rights Act  
25 would not pass today; is that what you said?

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1 A. I'm sorry?

2 Q. Did I hear you correctly say that the Voting Rights Act  
3 would not pass today? Did I hear you say that?

4 A. I don't believe that's what I said.

5 Q. Okay. Dr. Alford, I just ask you to sort of try to keep  
6 your answers a little bit shorter.

7 You testified in the 2023 Louisiana case of Robinson  
8 versus Ardoin?

9 A. Yes, I did.

10 Q. The analysis you conducted in that case was similar to  
11 the analysis you conducted in this case; is that fair to say?

12 A. That's correct.

13 Q. And the Robinson court included that your opinions,  
14 quote, "Ordered on *ipse dixit* and were unsupported by  
15 meaningful substantive analysis and were not the result of a  
16 commonly accepted methodology in the field;" Is that right?

17 A. I'd like to see the quote, but I think I would say --  
18 obviously the Court did not accept my interpretation of the  
19 fact pattern there.

20 Q. All right. I'll show you that quote. It's the top left.

21 "The Court found in the Robinson case that Dr. Alford's  
22 opinions border on *ipse dixit*. His opinions are unsupported  
23 by meaningful substantive analysis and are not the result of  
24 commonly accepted methodology in the field. Other courts have  
25 found the same."

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1 Is that what that Court found in the Robinson case? Did  
2 I read that correctly, Dr. Alford?

3 A. Yes. Again, I think the context above is important, but  
4 you're reading that correctly.

5 Q. Thank you. You testified in 2023 in the Pettway versus  
6 Galveston County case in the Southern District of Texas; is  
7 that right?

8 A. That's correct.

9 Q. And the analysis you conducted in that case was similar  
10 to the analysis you conducted in this case; is that right?

11 A. I would say parts of it were, yes. There are a lot of  
12 other issues. That case is a coalition case, so there's  
13 obviously other issues there that aren't issues here.

14 Q. But you conducted the same analysis with respect to  
15 racial versus partisan polarization in that case; is that  
16 right?

17 A. I believe that's correct, yes.

18 Q. And Judge Brown in the Pettway case found that your  
19 practice of assessing partisan polarization in addition to  
20 racial polarization is not, quote, "standard practice among  
21 redistricting experts;" is that correct?

22 A. Sounds like a reasonable quote and it is correct. Most  
23 plaintiff's experts don't do this kind of analysis and most  
24 redistricting experts are plaintiff's experts.

25 Q. You testified before a three-judge panel in the 2024

1 Mississippi case, Mississippi State Conference of the NAACP  
2 versus State Board of Election Commissioners; is that right?

3 A. That's correct.

4 Q. Fair to say that your analysis of the race versus  
5 partisan polarization issue in that case was similar to your  
6 analysis in this case?

7 A. Yes.

8 Q. And that court also concluded that it shared the concerns  
9 of the Robinson Court that your opinion, quote, "are  
10 unsupported by meaningful substantive analysis and border on  
11 *ipse dixit*;" is that correct?

12 A. I don't see -- will you point out where I'm reading that?

13 MS. THEODORE: Sure. Could you go to page 39  
14 please. Highlight the top left, please.

15 BY MS. THEODORE:

16 Q. So the Court there said, "To conclude on Dr. Alford, he  
17 offered similar testimony in Robinson, where the Court found  
18 his opinions are unsupported by meaningful substantive  
19 analysis and border on *ipse dixit*. We share those concerns."

20 Did I read that correctly?

21 A. Yes. And then they go on to say they accepted me as an  
22 expert and they find my opinion -- some of my opinions  
23 plausible, but that I don't overcome Dr. Handley's testimony.  
24 I agree with all that. I didn't overcome Dr. Handley's  
25 testimony, otherwise there would have been a different

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1 decision in the case.

2 Q. Okay. Dr. Alford, you have never published any  
3 peer-reviewed academic work about the Voting Rights Act,  
4 correct?

5 A. That's correct.

6 Q. You have never published any peer-reviewed academic work  
7 on racially polarized voting, correct?

8 A. That's correct.

9 Q. You have never published any peer-reviewed academic work  
10 on the voting patterns of Black voters in the United States;  
11 is that correct?

12 A. Specifically on Black voting behavior, that's correct.

13 Q. And you have never published any academic work on racial  
14 politics, correct?

15 A. That's correct.

16 Q. And you don't consider yourself to be an expert in the  
17 political science subfield of racial politics, correct?

18 A. No, that's a specialized field and it's not a field that  
19 I am in or consider myself to be a part of.

20 Q. And you don't consider yourself to be an expert in the  
21 academic subfield of minority voting behavior, correct?

22 A. That's correct. That's the same subfield.

23 Q. Prior to this case, you had never served as an expert  
24 witness in a case involving North Carolina, correct?

25 A. To the best of my recollection, that's correct.

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1 Q. Okay. And you've never published any academic work that  
2 relate specifically to North Carolina in any way, correct?

3 A. I believe that's correct, yes.

4 Q. Okay.

5 A. All that would have been different if I accepted the  
6 offer from University of North Carolina to receive my Ph.D.  
7 here, but I went to Iowa and then discovered winter and was  
8 regretful and have been ever since, but, you know, the paths  
9 they take us on take us in different places. I dearly love  
10 the State of North Carolina.

11 Q. All right. You were retained by the Legislative  
12 Defendants in this case to respond to the analysis of  
13 Dr. Collingwood, correct?

14 A. That's correct.

15 Q. And you reviewed Dr. Collingwood's code before writing  
16 your report, correct?

17 A. That's correct.

18 Q. And your report does not disclose any criticisms of  
19 Dr. Collingwood's code, correct?

20 A. That's correct.

21 Q. You reviewed Dr. Collingwood's data inputs before writing  
22 your report, correct?

23 A. That is correct.

24 Q. And your report does not include any opinions or  
25 criticisms about Dr. Collingwood's data inputs, correct?



1 A. That's correct. I think his work in this case is  
2 extremely competent.

3 Q. I'm sorry?

4 A. His analysis in this case is extremely competent and so  
5 I'm confident to rely on it.

6 Q. Your report contains no criticisms of the methodology  
7 that Dr. Collingwood used for analyzing racially polarized  
8 voting, correct?

9 A. The analysis is -- he uses the correct methodology,  
10 again, that's why I'm relying on his findings.

11 Q. You did an independent regression analysis of racially  
12 polarized voting in this case, correct?

13 A. Yes.

14 Q. And for your analysis the actual programming was done by  
15 a colleague of yours; is that right?

16 A. That's correct.

17 Q. And your results confirmed Dr. Collingwood's analysis; is  
18 that right?

19 A. That's right.

20 Q. And your report accepts and relies upon Dr. Collingwood's  
21 ecological inference analysis; is that right?

22 A. That's correct.

23 Q. And you're not contesting any of Dr. Collingwood's  
24 estimates for White voter support and Black voter support for  
25 any candidate or election that he analyzes, correct?

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1 A. That's correct.

2 Q. The racially polarized voting estimates listed in your  
3 tables in your appendix are point estimates from the  
4 ecological inference technique, correct?

5 A. That's correct.

6 Q. And you agree that the standard practice among social  
7 scientists and statisticians is to accompany specific  
8 ecological inference estimates referred to as point estimates  
9 with associated confidence intervals, correct?

10 A. That's typically the case, particularly if there's a  
11 hypothesis to be tested where that would be of some utility;  
12 but, yes, typically there's some indication of that. I  
13 believe that's -- if I'm not remembering incorrectly, I  
14 believe that's present in Dr. Collingwood's figures, I think.

15 Q. Okay. And in the figures that you reported in your  
16 appendix for your own ecological inference estimates, you  
17 didn't report confidence intervals; is that correct?

18 A. I don't recall specifically, but I think your -- I think  
19 you asked me this before, and I think that's correct. I  
20 think, again, there was -- I wasn't concerned whether we found  
21 the same -- they are actually not confidence intervals,  
22 they're credible intervals, but I wasn't concerned whether we  
23 were getting the same credible intervals; I was concerned with  
24 whether we were getting comparable point estimates. So I  
25 think all I was reporting was the point estimates.

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1 Q. All right. I'll just refresh your recollection.

2 At your deposition, do you recall that I asked: You  
3 don't report confidence intervals for your EI point estimates  
4 in your report, correct?

5 And you answered: That's correct.

6 Do you recall that?

7 A. I think that's correct. Again, I'm not using -- I'm not  
8 in any way relying on those point estimates, so -- I mean,  
9 there are credible intervals for them, but they're not -- I'm  
10 not necessarily -- since I'm not relying on the point  
11 estimates at all, nor are either Dr. Collingwood or I relying  
12 on any credible intervals, I don't see the -- I'm not sure  
13 what the point is, but that's correct.

14 Q. And Dr. Collingwood did report confidence intervals for  
15 all of his racially polarized voting estimates; is that  
16 correct?

17 A. Yes. So to the extent that I've taken credible intervals  
18 into effect here, I've relied entirely on Dr. Collingwood's  
19 credible intervals.

20 Q. Dr. Collingwood's racially polarized voting analysis  
21 focused on statewide elections from 2016, 2018, 2020, and  
22 2022, correct?

23 A. Correct.

24 Q. And your report does not criticize his choice of  
25 elections, correct?

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1 A. Correct.

2 Q. And you yourself did not analyze any additional elections  
3 for any purpose, correct?

4 A. That's correct.

5 Q. And you could have, but chose not to, correct?

6 A. Correct.

7 Q. And you spoke a little bit about this with Legislative  
8 Defendants' counsel, but I'm going to refer in our discussion  
9 today to an area in northeastern North Carolina that I'll call  
10 the demonstration area and you understand that when I refer to  
11 the demonstration area I'm referring to the 12 counties that  
12 form part of one or more of Plaintiffs' Demonstration  
13 Districts, correct?

14 A. What I know about the demonstration area is the 12-county  
15 area that Dr. Collingwood used in his report. Sounds to me  
16 like roughly what Dr. Collingwood testified to, but I haven't  
17 examined that issue on a map, so... All I can tell you is I'm  
18 using the 12-county demonstration area that Dr. Collingwood  
19 used because I'm relying on Dr. Collingwood's analysis.

20 Q. Okay. And Dr. Collingwood analyzed racially polarized  
21 voting in the demonstration area as well as Senate Districts 1  
22 and 2 and also statewide; is that correct?

23 A. That's correct.

24 Q. And your report does not criticize his choice of regions  
25 to focus on, correct?

1 A. Correct.

2 Q. The Gingles II precondition refers to a threshold test  
3 that asks whether minority voters are voting cohesively,  
4 correct?

5 A. That's correct.

6 Q. All right. Let's call up Plaintiffs' Exhibit 36, page 9  
7 which is Figure 2 of Dr. Collingwood report.

8 And Dr. Collingwood finds that Black voters in Senate  
9 District 1 supported the Black-preferred candidate at average  
10 rates of 94 percent in 2022 and 97 or 98 percent in 2016,  
11 2018, and 2020, correct?

12 A. That's what this shows.

13 Q. And let's go to page 10, Figure 3. And Dr. Collingwood  
14 finds that Black voters supported the Black-preferred  
15 candidate at average rates of 98 percent and 99 percent in all  
16 four election years in District 2, correct?

17 A. That appears to be correct.

18 Q. All right. And let's go to Figure 4 -- I'm sorry. It's  
19 not on page 4. I think it's page 11. Maybe 12.

20 Dr. Collingwood finds that Black voters supported the  
21 Black-preferred candidate at average rates of 98 percent or  
22 99 percent in all four election years in the demonstration  
23 area, correct?

24 A. That appears to be correct.

25 Q. You agree that these results show that Black voters in

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1 northeastern North Carolina are extremely politically  
2 cohesive, correct?

3 A. They are politically cohesive.

4 Q. And you agree that these results show that Black voters  
5 are extremely politically cohesive in northeastern North  
6 Carolina, correct?

7 A. I usually hesitate to use adjectives, but I would say in  
8 this case I wouldn't disagree that that might be considered to  
9 be extremely politically cohesive.

10 Q. Okay. And do you recall at your deposition I asked you  
11 the question: You agree that these results show that Black  
12 voters are extremely politically cohesive?

13 And you answered: Yes.

14 Do you recall that?

15 A. I don't recall that; but if it's in the deposition  
16 transcript, I guess I'm not disagreeing with that.

17 MS. THEODORE: Can we pull it up, Troy. Page 53.

18 BY MS. THEODORE:

19 Q. And you see there I ask you: You agree that these  
20 results show that Black voters are extremely politically  
21 cohesive?

22 And you answered: Yes.

23 Was that your testimony in that deposition?

24 A. Yeah, that's my answer to that -- to that question. I  
25 know we had a very lengthy discussion about cohesion, but that

1 is my answer to that question. I'd say I don't disagree with  
2 that answer.

3 Q. You agree that the Gingles II precondition is satisfied  
4 in this case, correct?

5 A. I believe so, yes.

6 Q. The racially polarized voting results that you  
7 independently calculated in your appendix also show that Black  
8 voters are highly politically cohesive, correct?

9 A. Again, I didn't depend on them for any of my subsequent  
10 work in the case so -- I know they are compatible with  
11 Dr. Collingwood's results, so I conclude if -- if I conclude  
12 that based on Dr. Collingwood's results, I assume I would  
13 conclude that based on my own results, but I haven't actually  
14 examined that to assess that question based on those results  
15 because none of my testimony relies on those results.

16 Q. Okay. Can we pull up your deposition at page 55. And  
17 you see there I ask you at line 16: The racially polarized  
18 voting results that you independently calculated in your  
19 appendix also show that Black voters are highly politically  
20 cohesive, correct?

21 And you answered: Correct.

22 A. Yes. And, again, I'm agreeing with that. I think that  
23 that would be correct because I know they're compatible with  
24 Dr. Collingwood's results.

25 Q. Okay. You also agree that Gingles II doesn't require

1 Black voters to cohesively support Black candidates, correct?

2 A. That's correct.

3 Q. And you agree with some election contests with both Black  
4 and White candidates, a White candidate could be the preferred  
5 candidate for Black voters, direct?

6 A. In North Carolina as long as the candidate is a Democrat,  
7 they're the preferred candidate of Black voters. It doesn't  
8 matter what they are.

9 Q. So you agree in some election contests with both Black  
10 and White candidates, a White candidate could be the preferred  
11 candidate for Black voters, correct?

12 A. Yes. A Republican cannot be, but a Democrat can be  
13 regardless of whether they are Black or White.

14 Q. Okay. All right. So let's turn to the third Gingles  
15 precondition.

16 You agree that it's not at all uncommon that levels of  
17 White bloc voting might be different in neighboring counties  
18 or neighboring districts, correct?

19 A. Correct.

20 Q. You also agree that in analyzing racially polarized  
21 voting, more recent elections are generally more probative or  
22 relevant than older elections, correct?

23 A. Correct.

24 Q. All right. Let's pull up from Dr. Collingwood's report  
25 Figure 2 and put it next to Figure 3.



1 Figure 2 and Figure 3 reflect Dr. Collingwood's results  
2 showing the percent of White voters in 2016, 2018, 2020, and  
3 2022 in Senate Districts 1 and 2 that cross over to support  
4 the Black-preferred candidate, correct?

5 A. That would be correct, yes.

6 Q. And you don't dispute any of the numerical results shown  
7 here, correct?

8 A. I mean, I certainly didn't plot this to see if they're  
9 plotted correctly, but I'm accepting them at face value.

10 Q. Okay. You don't dispute that in the most recent two  
11 election years White voters in Senate District 1 voted against  
12 the Black-preferred candidate on average at rates of  
13 79 percent and 80 percent, correct?

14 A. I'm sorry. Which -- we're talking about Senate District  
15 1?

16 Q. Correct.

17 A. In the two most recent years?

18 Q. Correct.

19 A. So at about 80 percent, yes.

20 Q. And you don't dispute that in the most recent two  
21 election years, White voters in Senate District 2 voted  
22 against the Black-preferred candidate on average at rates of  
23 83 percent and 84 percent, correct?

24 A. That's correct.

25 Q. And you are not disputing in this case that White voters

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1 vote sufficiently as a bloc to enable them usually to defeat  
2 the minority's preferred candidate in Senate District 1 and  
3 Senate District 2, correct?

4 A. Correct. These are Republican districts. They're  
5 competitive by American standards, rare these days, but they  
6 are Republican-leading districts, I assume drawn to be  
7 Republican-leaning districts and they perform as Republican  
8 districts. And, again, as I indicated earlier, that's all we  
9 need to know if a district is a Republican-leaning district,  
10 it will not elect the Black candidate of choice. If it's a  
11 Democratic district, it will.

12 Q. As part of your own racially polarized voting analysis,  
13 you analyzed the same 2018 elections that Dr. Collingwood  
14 analyzed, correct?

15 A. Twenty-eight?

16 Q. I'm sorry. As part of your own racially polarized voting  
17 analysis, you analyzed the same elections from the year 2018  
18 that Dr. Collingwood analyzed, correct?

19 A. I didn't analyze any elections other than the ones Dr.  
20 Collingwood did, so I would assume that would be correct, yes.

21 Q. So let's pull up Table A5 from your appendix. Do you  
22 recognize this as containing your analysis of polarized voting  
23 in Senate District 1 in 2016 and 2018, correct?

24 A. Yes.

25 Q. Do you see an election at the bottom labeled, 2018

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1 Appeals Court 2 race reporting results for candidates Griffin  
2 and Ray?

3 A. Yes.

4 Q. And they are both Republicans; is that right?

5 A. That's correct.

6 Q. And you combined White voter support for those two  
7 candidates in this table; is that correct?

8 A. Dr. Collingwood combined them.

9 Q. Dr. Alford, in this table that you produced in your  
10 report showing your results as well as Dr. Collingwood's, you  
11 combined results for candidates Griffin and Ray, correct?

12 A. I just want to be clear, I didn't make the choice to  
13 combine the two candidates. This is a replication analysis,  
14 so I need to know if I get the same number as Dr. Collingwood.  
15 So if Dr. Collingwood combines two candidates, then I combine  
16 two candidates. So that's not a choice I made. I was just  
17 simply following his pattern.

18 THE COURT: Time for a 15-minute break.

19 (The proceedings were recessed at 11:00 a.m. and  
20 reconvened at 11:15 a.m.)

21 THE COURT: You may continue the cross-examination.

22 BY MS. THEODORE:

23 Q. So Dr. Alford, in Table A5 from your appendix, there are  
24 two judicial elections where you've combined White voter  
25 support for the two Republican candidates in the table; is

1 that right?

2 A. Yes. Again, I'm not combining them. I'm taking that  
3 data from Dr. Collingwood and I'm duplicating his analysis.  
4 So they are combined in my analysis, but not -- it's not my  
5 decision to combine them.

6 MS. THEODORE: Okay. Could we pull up Figure 23  
7 from Dr. Collingwood's report on page 36.

8 BY MS. THEODORE:

9 Q. And Dr. Collingwood in his report included a separate  
10 appendix table that reported on how his racially polarized  
11 voting analysis would change if those Republican candidates  
12 were kept separate; is that correct?

13 A. That's correct.

14 Q. And the title of this Figure 23 is, "Keep Republican  
15 Candidates Separate," correct?

16 A. Correct.

17 Q. Your report does not include any separate figure showing  
18 results if those candidates are treated separately, correct?

19 A. That's correct.

20 Q. And your report discloses no criticism of  
21 Dr. Collingwood's opinion that it's more appropriate to  
22 combine White support for those two candidates; is that  
23 correct?

24 A. That's correct.

25 Q. Okay. In addition to the racially polarized voting

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1 analysis we've been discussing, Dr. Collingwood also conducted  
2 a separate performance analysis; is that correct?

3 A. His -- I think he calls it his BVAP analysis, yes.

4 Q. I'm talking about something different. I'm talking about  
5 his -- he conducts a separate performance analysis of Senate  
6 Districts 1 and 2 and the Demonstration Districts; is that  
7 correct?

8 A. That's correct.

9 Q. And your report discloses no criticism of the methodology  
10 that he used to conduct the performance analysis, correct?

11 A. That's correct.

12 Q. And you've offered opinions on performance analysis in  
13 prior cases, correct?

14 A. Correct.

15 Q. And that's sometimes also called a reconstituted election  
16 analysis; is that correct?

17 A. That's correct.

18 Q. And you agree that when conducting a performance analysis  
19 or a reconstituted election analysis of a new district using  
20 results of prior elections, it's best to use prior statewide  
21 exogenous elections where the race was contested throughout  
22 the entire district; is that correct?

23 A. Well, again, assuming that there are not endogenous  
24 elections that provide that same opportunity, then I would  
25 agree that you typically use exogenous elections for that

1 limited purpose.

2 Q. And when you're referring to endogenous elections that  
3 provide that same opportunity, you're referring to prior  
4 endogenous elections where there was contested voting in the  
5 same race throughout the entire district; is that correct?

6 A. That would be correct, yes.

7 Q. Okay. All right. So much of your report contains tables  
8 in which you report the race and party of various candidates  
9 in various combinations of North Carolina elections between  
10 2016 and 2022, correct?

11 A. Correct.

12 Q. All right. So let's look at Table 1 of your report,  
13 which is on page 6. And this chart is showing three North  
14 Carolina elections for U.S. Senate between 2016 and 2022,  
15 correct?

16 A. That's correct.

17 Q. And the Beasley-Budd race is the one race that pits a  
18 Black candidate against a White candidate, correct?

19 A. Correct.

20 Q. And in that race Black voters in the demonstration area  
21 Senate District 1 and Senate District 2 overwhelmingly support  
22 the Black candidate at levels between 95 and 99 percent,  
23 correct?

24 A. That's correct.

25 Q. And White voters in that race in the demonstration area,

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1 Senate District 1 and Senate District 2, cohesively support  
2 the White candidate, correct?

3 A. Yes. And, again, that, as we know from the broader  
4 table, you can say that, but they're supporting the Democratic  
5 and the Republican candidate at different levels.

6 Again, that's where I find it problematic to focus on the  
7 race of the candidate here because it suggests that Black  
8 candidates -- Black voters are supporting the Black candidate;  
9 White voters are supporting the White candidate, that's true,  
10 but that split in support is -- it is -- you might say it's  
11 equally true to say they support the Democratic or Republican  
12 candidate. But we know from looking at the top of the table  
13 that it's not equally true, it's just not -- you're implying  
14 something by saying Black voters support Black candidates and  
15 White voters support White candidates. This table  
16 demonstrates it's simply not an appropriate inference either  
17 to make or to suggest in talking about these elections.

18 If you cover up the party table, then you can take a  
19 contest like that. Sometimes plaintiff experts, for example,  
20 only use racially contested elections. And I have seen a  
21 plaintiff's expert when they use only racially contested  
22 elections say in their conclusion black voters overwhelmingly  
23 prefer Black candidates; White voters will not support Black  
24 candidates. And, again, that's a very frank suggestion that  
25 this is about a response to the race of the candidates.

1       And that, again, I'm perfectly fine with any argument  
2 about whether that matters or not; but in terms of describing  
3 voting in North Carolina, I think it's important when we're  
4 talking about race and voting to be very careful about  
5 implying something that an audience hearing this or reading  
6 this in the newspaper might think that that means something  
7 dramatically different about the behavior and what's been  
8 demonstrated here.

9       Q.    I understand all of that. I'm just asking you as a  
10 factual matter in the one race pitting a White candidate  
11 versus a Black candidate. In this Table 1, Black voters  
12 overwhelmingly support the Black candidate and White voters  
13 cohesively support the White candidate. That's accurate?

14       A.    Again, that's factually accurate. It's also factually  
15 accurate to say exactly the same thing about Black voters  
16 supporting the White candidate in the other two races.

17       Q.    Okay. So let's go to Table 2 of your report. This chart  
18 shows seven North Carolina Supreme Court elections between  
19 2016 and 2022, correct?

20       A.    Correct.

21       Q.    And here there are two partisan elections that pit Black  
22 candidates against White candidates, correct?

23       A.    That's correct.

24       Q.    Again, as a factual matter, in those two contests between  
25 Black and White candidates, Black voters overwhelmingly



1 support the Black candidate and White voters cohesively  
2 support the White candidate; is that correct?

3 A. Yes. And again, the purpose of my table is to make sure  
4 that we understand that while that is a narrowly factually  
5 true statement, it mischaracterizes the voting behavior of  
6 voters in North Carolina.

7 Q. Okay. And there's one nonpartisan contest here between a  
8 Black and White candidate which is the Morgan-Edmunds race, is  
9 that right?

10 A. That's correct.

11 Q. And you would agree that this is a single election in  
12 which the preferences might well have been the reverse of this  
13 and it still would still just be a single election, and that  
14 this election doesn't stand out well as a piece of evidence  
15 against 48 other elections? Do you agree with that?

16 A. That's like a -- at least four different things I need to  
17 agree with there. If we can sort of take them one at a time  
18 it might be easier.

19 Q. All right. Why don't we pull up your deposition at  
20 page 185 -- I'm sorry -- 186.

21 All right. We're talking on this page of the transcript  
22 about the Morgan-Edmunds race; is that right?

23 A. Yes.

24 Q. All right. And you say: I would like to point out that  
25 this is a single election in which the preferences --

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1 MS. McKNIGHT: Objection, Your Honor. I would like  
2 to note that there was a standing objection to form in the  
3 deposition itself -- you can see it at the line above -- for  
4 the same exact reason likely that Dr. Alford pointed out that  
5 it's a compound question.

6 THE COURT: Just ask him a noncompound question here  
7 in court. That'll just save us time, and time is a gift  
8 necessary for all other gifts and we often forget it as human  
9 beings and we shouldn't.

10 MS. THEODORE: All right.

11 BY MS. THEODORE:

12 Q. So Dr. Alford, you recall that I asked you: Putting  
13 aside what the 2016 Morgan-Edmunds race shows about White  
14 cohesive voting, isn't it true that this election shows that  
15 the race of the candidate, independent of the party of the  
16 candidate, has some explanatory value for Black voter  
17 preferences?

18 A. I guess I'm only seeing -- I'm seeing just the tail end  
19 of whatever the question was I was asked here.

20 MS. THEODORE: Can you put up 185 and 186 together.  
21 Switch them.

22 BY MS. THEODORE:

23 Q. Okay. I asked you: Putting aside what the  
24 Morgan-Edmunds election shows about White cohesive voting,  
25 isn't it true that this election shows that the race of the

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1 candidate, independent of the party of the candidate, has some  
2 explanatory value for Black voter preferences?

3 MS. McKNIGHT: Objection, vague. Just repeating the  
4 same objection from the deposition, Your Honor.

5 THE WITNESS: Yes.

6 THE COURT: Ms. Theodore, it would just be better if  
7 you just ask him a single question. This is a waste of time.  
8 Just ask him a clear question. Then if you want to impeach  
9 him, you can. I mean, this is silly and a waste of time.

10 Ask a noncompound, clear question.

11 BY MS. THEODORE:

12 Q. Dr. Alford, do you agree that the 2016 election doesn't  
13 stand out well -- I'm sorry. I'll start again.

14 Do you agree that the 2016 Morgan-Edmunds election  
15 doesn't stand out well as a piece of evidence against 48 other  
16 elections?

17 A. It would on some issues and not on others. It really is  
18 a function of what it is that it varies on. Its value is that  
19 it is a nonpartisan election versus the other elections.

20 Any single election -- if we have 48 elections and only  
21 one election show some pattern, then that doesn't mean that  
22 that pattern outweighs the other 48 elections.

23 What's distinctive about the election is its value, it's  
24 the only nonpartisan election. So in that sense, yes, it  
25 would be nice to have, you know, another 48 nonpartisan

1 elections, but I didn't choose the elections for this  
2 analysis; Dr. Collingwood did. This election is there. It  
3 is -- it is a distinct election setting, and that's what I  
4 used it -- that's what I expressed in my testimony. And I'm  
5 not suggesting that in any way it causes me to set aside the  
6 other 47 -- or 48 elections, sorry, because it's completely  
7 compatible with the other 48 elections.

8 Again, if we were using it to discredit the other  
9 elections, that would be different. I'm just saying that it  
10 is a single election, but that single election actually shows  
11 the same thing as the other 48 elections.

12 Q. And the 2016 Morgan-Edmunds race you would agree shows  
13 that even if there's no partisan indication on the ballot the  
14 race of the candidate has explanatory value for the cohesion  
15 we see in Black voter preferences, correct?

16 A. In that single election, yes. Correct.

17 Q. Okay. All right. Let's go to Table 3 of your report,  
18 page 10.

19 This chart shows 17 North Carolina elections for State  
20 Courts of Appeals, correct?

21 A. Correct.

22 Q. There are six elections that pit Black candidates against  
23 White candidates; is that correct?

24 A. That's correct.

25 Q. And in all six of those elections, Black voters are

1 cohesively supporting the Black candidate and White voters are  
2 cohesively supporting the White candidate, is that correct, as  
3 a factual matter?

4 A. As a factual matter. And again, I think it  
5 mischaracterizes the table; but as a factual matter, that's  
6 correct.

7 Q. And you agree that 80 percent and above is substantial  
8 cohesion, correct?

9 A. Substantial, yes, I would agree with that.

10 Q. And you've also offered 75 percent as a standard to  
11 assess whether Black or White voters are voting cohesively,  
12 correct?

13 A. The court doesn't have a standard for measuring  
14 cohesion -- I'm sorry. Doesn't have a standard for deciding  
15 cohesion versus non-cohesion. Court has a measure of cohesion  
16 that's a continuous measure from cohesion to perfect cohesion  
17 Different courts treat it differently, sometimes with regard  
18 to specific things in the case; sometimes just with an  
19 understanding of cohesion.

20 I tried to be helpful in -- by pointing out in various  
21 cases that 75 percent -- not as a standard, but that  
22 75 percent as a value is a neutral point, a natural division  
23 point between elections in which there is more cohesion than  
24 non-cohesion and elections in which there is more non-cohesion  
25 than cohesion. So I think it's one way you can divide the

1 range of cohesion from 50 percent plus one to 100 percent in a  
2 way that a court might at least be able to characterize if the  
3 court wanted to draw a bright line, for example, it would make  
4 sense to me that the bright line would be drawn somewhere  
5 above 75 percent because that's the range in which cohesion  
6 dominates over non-cohesion.

7 I don't think a 65 percent -- or 60 percent, for example,  
8 line, which some plaintiff's experts have suggested makes  
9 sense because it's in the non-cohesion range. I think  
10 Dr. Collingwood's standard of 50 percent plus one is simply  
11 tautological sense. It means there's always cohesion.

12 So it's -- there's a lot of uncertainty in the court  
13 cases about how to characterize cohesion. And 75 percent is  
14 not my number or my standard. It's just -- it is the neutral  
15 point between perfect cohesion and the complete lack of  
16 cohesion, and so it's a way to start thinking about where you  
17 might want to locate, where the court might want to locate a  
18 test, but I don't -- personally I'm not advocating a  
19 particular cutoff point myself.

20 Q. Seventy-five percent is a standard that you have applied  
21 in previous cases to assess whether Black or White voters are  
22 voting cohesively, correct?

23 A. It's a reference point you could use to talk about  
24 whether you're in a range of more cohesion or less cohesion,  
25 yes.

## J. Alford - Cross-Examination

1 Q. Let's go to Table 4 of your report, which is on page 12.  
2 And this is the table showing racially polarized voting  
3 results for all of the statewide races in 2016, correct.

4 A. That's correct.

5 Q. Okay. And in the partisan elections that pit Black  
6 candidates against White candidates, Black voters are  
7 cohesively supporting the Black candidate and White voters are  
8 cohesively supporting the White candidate, correct?

9 A. Obviously, there's less cohesion among White voters, but  
10 certainly White voters are predominantly supporting -- showing  
11 some level of cohesion for the Republican candidates and Black  
12 voters showing very high levels of cohesion for the Democratic  
13 candidate.

14 Q. All right. Let's go to Table 5. And this is your table  
15 showing the racially polarized voting results for 2018,  
16 correct?

17 A. That is correct.

18 Q. And in the one race between a Black and a White candidate  
19 in 2018, Black voters are overwhelmingly supporting the Black  
20 candidate in that race at a level between 98 and 99 percent  
21 and White voters are supporting the White candidates at a  
22 level between 75 percent and 83 percent in the demonstration  
23 area between Senate District 1 and Senate District 2, correct?

24 A. Again, as a factual, it's true; but, again, what the  
25 table shows is that what you're saying is true about Black

## J. Alford - Cross-Examination

1 support for Democratic candidates and White support for  
2 Republican candidates.

3 Q. All right. Let's go to Table 6. And this is the  
4 racially polarized voting results for 2020; is that right?

5 A. Correct.

6 Q. And you have the Gore-Cubbage race in the  
7 Black-verse-White category, but that should -- that's a  
8 mistake in the table, correct?

9 A. That's correct. It should be at the bottom of the table.  
10 It's a non-racially contested election.

11 Q. So there are three races pitting White candidates against  
12 Black candidates in 2020, correct?

13 A. Correct.

14 Q. And in all those races, the Black voters in the  
15 demonstration area in Senate District 1 and Senate District 2  
16 are overwhelmingly supporting the Black candidate and White  
17 voters are supporting the White candidate at rates between 80  
18 and 86 percent; is that right?

19 A. Yes. Again, factually correct about that subset of the  
20 table, but it's also correct that the same is true about  
21 Democratic and Republican candidates when both are White.  
22 It's also correct that -- for both the Gore-Cubbage race and  
23 the Holley-Robinson race -- that White voters are  
24 overwhelmingly supporting a Black candidate.

25 Q. Okay. Next table please, Table 7. This is the 2022



1 results; is that right?

2 A. That's correct.

3 Q. And in the three races that pit a Black candidate against  
4 a White candidate, Black voters in the demonstration area  
5 Senate District 1 and Senate District 2 are overwhelmingly  
6 supporting the Black candidate and White voters are supporting  
7 the White candidates at levels between 77 and 85 percent,  
8 correct?

9 A. Yes. And again, the table broadly shows the same is  
10 true; Democratic and Republican candidates when the Democratic  
11 candidate is White.

12 Q. Okay. So across all four years, you would agree that it  
13 is empirically true that in contests pitting Black candidates  
14 against White candidates, White voters overwhelmingly prefer  
15 the White candidate and Black voters overwhelmingly prefer the  
16 Black candidate, correct?

17 A. Again, I guess it depends on what you mean by  
18 "overwhelmingly prefer." We don't really have a measure of  
19 preference here.

20 Again, White voters overwhelmingly vote Republican and  
21 Black voters overwhelmingly vote Democratic. Again, when you  
22 start saying things like White voters overwhelmingly prefer  
23 White candidates and Black voters overwhelmingly prefer Black  
24 candidates, you're just running right up against saying  
25 something that might be technically true but is I think in an

## J. Alford - Cross-Examination

1 area where we need to be very careful, and this is one of  
2 them. That's a very misleading statement and a dangerous  
3 statement.

4 Q. Thank you, Dr. Alford. But I'd just like to confirm.  
5 Across all four years, it is empirically true that in contests  
6 pitting Black candidates against White candidates, White  
7 voters overwhelmingly prefer the White candidate and Black  
8 voters overwhelmingly prefer the Black candidate, correct?

9 A. Again, we're not measuring candidate or voter preference  
10 here. We're measuring ecological result of election results.  
11 And it is correct that these results show that for those  
12 contests where you focus in specifically on the Black versus  
13 White contest, ignoring the White-versus-White contest  
14 ignoring the Black-versus-Black contest, you can make that  
15 statement; that the result show cohesion among Black voters  
16 for the candidate that happens to be Black, the Democrat and  
17 the candidate that happens to be White in that subset of  
18 elections. But I just want to make it clear, it does not show  
19 something about voting based on a racial preference.

20 Q. Do you recall I asked you that question in your  
21 deposition and you answered: Yeah, I think that's true.

22 A. I'd like to see the context of the deposition, how long  
23 it took us to get to the point where I just said, okay, fine,  
24 it's true.

25 Q. Okay.

## J. Alford - Cross-Examination

1 A. But I -- again, I'm not saying it's not true. I'm saying  
2 it's misleading. So if I -- I suspect I might have pointed  
3 that out in the deposition. If I didn't, I was remiss. But I  
4 want to make it clear what my belief about this is, what I  
5 think is very important to understand about these tables.

6 MS. THEODORE: Can we pull up 135 and 136.

7 BY MS. THEODORE:

8 Q. Do you see there that I ask you that question and you  
9 say: Yeah, I think that's true?

10 MS. McKNIGHT: Objection, Your Honor. This question  
11 was objected to during the deposition on page 136 at line 3.

12 THE WITNESS: Yes.

13 THE COURT: There's an objection. So that means I  
14 have to read all of this and then I -- I should have told you.  
15 I usually tell all the witnesses. When the lawyers object,  
16 then everybody has to be quiet when I read things so then I  
17 can rule, and then I can tell you what to do.

18 So let me read this.

19 (Pause in the proceeding.)

20 THE COURT: Doctor, read the questions at lines 22  
21 through 2, and tell me when you're done.

22 THE WITNESS: On page?

23 THE COURT: 135. Just read it to yourself and go up  
24 the line 2 on page 136. We'll try to move this along so that  
25 we are good stewards of each other's time. So tell me when

## J. Alford - Cross-Examination

1 you read from line 22 on page 135 to line 2 on page 136.

2 (Pause in the proceeding.)

3 THE WITNESS: I've read it.

4 THE COURT: Then read lines 4 and 5.

5 Did you say that in response to the question that  
6 Ms. Theodore asked you in the deposition?

7 THE WITNESS: Yes.

8 THE COURT: Next question.

9 BY MS. THEODORE:

10 Q. All right. So switching gears a little bit.

11 You agree that what you and Dr. Collingwood demonstrated  
12 here is that race of the voter is strongly connected to the  
13 party of the candidate the voter votes for, correct?

14 A. That's correct.

15 Q. And you haven't demonstrated why that's the case,  
16 correct?

17 A. Neither Dr. Collingwood or myself have examined that  
18 question.

19 Q. Okay.

20 A. I would say that I agree with Dr. Collingwood that it's  
21 probably related to policy. He expressed several reasons why  
22 he thought that might be the case, that it was related to  
23 policy differences, to views about politics.

24 I agree broadly -- we have some understanding of how  
25 voters make choices with regards to policy differences across

## J. Alford - Cross-Examination

1 candidates. And so I don't -- again, neither of us -- there's  
2 no empirical evidence in this case from either of us about how  
3 that specific choice is being driven in North Carolina in  
4 these elections. But I don't think that Dr. Collingwood is  
5 wrong to suspect that it might relate to policy.

6 Q. And you're sort of anticipating my next question.

7 You didn't do any analysis to determine whether  
8 candidates' positions on issues had racial components that led  
9 to the voting patterns that we see here, correct?

10 A. That is correct. I'm simply responding to the analysis  
11 Dr. Collingwood performed here.

12 Q. Okay. And so you haven't done any work to try to assess  
13 whether Black voters consistently support Democratic  
14 candidates because they're Democrats or whether they  
15 consistently support Democratic candidates because Democratic  
16 candidates promote policies and values shared by Black voters;  
17 is that correct?

18 A. That's correct. We don't have an empirical analysis  
19 that -- my view, my view is that that's very likely to be  
20 correct and that's I think is precisely my point, I guess,  
21 that that's very likely to be the case. These are about  
22 policy differences and that's what's driving these voting  
23 differences.

24 Q. You agree that candidates who are Democrats may be more  
25 likely than candidates who are Republicans to hold particular

## J. Alford - Cross-Examination

1 policy views that Black voters believe will advance the  
2 interests of Black people, correct?

3 MS. McKNIGHT: Objection. Beyond the scope of his  
4 report, Your Honor.

5 THE COURT: I'll allow it. If you have an opinion  
6 on it. If you understand the question.

7 THE WITNESS: I mean, I'll just say my -- I know a  
8 lot about voting behavior, so, yes, it is the case that there  
9 are policy positions preferred by Black voters that are also  
10 more likely to be represented by Black elected officials.  
11 There are also policy positions where Democratic officials  
12 are -- have very different policy views than Black voters.

13 With the nature of an amalgamated two-party system,  
14 we get some of what we want and some what we -- some of what  
15 we don't want and there's something particularly distinctive  
16 about that fact for either Black or White voters. Both Black  
17 and White Democrats accept that Democrats don't always agree  
18 with their policy positions, but, net, they're closer than  
19 Republicans and vice versa.

20 Q. And you don't believe that a Black candidate will  
21 necessarily advance the goals of interests of Black voters  
22 better than a White candidate, correct?

23 A. My own personal view? Yeah, I wouldn't say that Mark  
24 Robinson would do a better job of advancing the interests of  
25 Black voters in North Carolina than Josh Stein. I don't think

## J. Alford - Cross-Examination

1 we can assume that from the race of the candidates. It's the  
2 party of the candidates tells us a lot about that.

3 Q. Okay. And you would agree that it's not possible to  
4 establish the cause of voter behavior outside of an  
5 experimental setting, correct?

6 A. Yes. But I want to make it clear that you're probably  
7 using the term "cause" differently than a social scientist or  
8 scientist would use the word cause. Causal analysis is a very  
9 specific -- very specific term and it refers almost entirely  
10 to a structure of a scientific inquiry, not to the statistical  
11 nature of the inquiry. So we have very, very little causal  
12 inquiry in the social sciences. This would certainly be one  
13 of the areas where in terms of sort of the methodology  
14 currently used in political science. A causal determination  
15 for voting behavior simply doesn't -- in the current  
16 literature, I'm not aware of any study that provides solid  
17 evidence of a causal connection for anything related to voting  
18 behavior.

19 Q. Okay.

20 A. We use the term or should use the term cautiously. We  
21 talk about things influencing things or being associated with  
22 things or being correlated with things. But cause, causation  
23 is a, you know, very specific scientific term and that implies  
24 considerable levels of control over an experimental setting  
25 which in the case of human behavior, particularly political

## J. Alford - Cross-Examination

1 behavior is neither possible or ethical.

2 Q. You believe it's possible for political affiliation to be  
3 motivated by race, correct?

4 A. It's possible for it to be motivated by anything,  
5 including race.

6 Q. You agree with the statement that people are voting by  
7 race because they have a common interest and that common  
8 interest goes to whoever is representing that philosophy,  
9 correct?

10 A. I think that's a fair general statement. I don't think  
11 it applies to everybody, but I think as a broad brush  
12 statement, I think it's a fair statement.

13 Q. All right. And on page 19 of your report, you say that  
14 the election analysis provided by Dr. Collingwood clearly  
15 demonstrates that the party affiliation of the candidates best  
16 explains the divergent voting preferences of Black and White  
17 voters in North Carolina elections, correct?

18 A. Yes.

19 Q. And when you say, "best" in that sentence, the comparison  
20 you're drawing is between the party affiliation of the  
21 candidate and the race of the candidate, correct?

22 A. Correct. Those are the only two variables that are  
23 testable in terms of the analysis that Dr. Collingwood has  
24 provided. So we have information about the party of the  
25 candidates. We have information about the race. We don't



## J. Alford - Cross-Examination

1 have, you know, lots of other kinds of things, but we can  
2 test -- we can basically see what impact it has when we look  
3 at one of those versus the other, and that's what all of my  
4 tables do and that's what this sentence suggests that we can  
5 see from that comparison.

6 Q. You do not offer any opinion or evidence that White  
7 voters constitute the majority of Democratic voters in the  
8 demonstration area District 1 or District 2, correct?

9 A. I have no -- done no examination of party affiliation of  
10 voters in any area of North Carolina.

11 Q. Okay. And you haven't offered any opinion that  
12 Republicans aggressively recruit Black candidates to run in  
13 elections in North Carolina or in northeastern North Carolina,  
14 correct?

15 A. I've done no investigation of candidate recruitment in  
16 North Carolina.

17 Q. Okay. And, in fact, of the 49 elections over the four  
18 years that you and Dr. Collingwood analyzed, the Republican  
19 Party fielded a Black candidate in only two of those  
20 elections, correct?

21 A. I believe that's correct.

22 Q. And in both of those cases where the Republican Party  
23 fielded a Black candidate, it was against another Black  
24 candidate; is that correct?

25 A. I believe in those 49 elections, that is correct.

1 Q. Okay. The ecological inference method that you and  
2 Dr. Collingwood apply and interpret in this case is a  
3 statistical method, correct?

4 A. I'm sorry. Is a --

5 Q. The ecological inference method that you and  
6 Dr. Collingwood apply and interpret in this case is a  
7 statistical method, correct?

8 A. It is a statistical method, yes.

9 Q. And you believe that one type of expertise you bring to  
10 redistricting litigation is your statistical training and  
11 expertise, correct?

12 A. Yes. I mean, I would say more broadly research  
13 methodology. Statistics is a part of that, yes.

14 Q. You've relied on Citizen Voting Age Population data from  
15 the Census Bureau, American Community Survey in your work as  
16 an expert in voting rights cases, correct?

17 A. I have.

18 Q. And CVAP and Black CVAP is expressed in what's known as a  
19 point estimate, correct?

20 A. There is a point estimate, correct.

21 Q. Okay. And the CVAP point estimate is the -- let me ask  
22 this: American Community Survey point estimates for CVAP are  
23 accompanied by confidence intervals reported as plus or minus  
24 the same number, correct?

25 MS. McKNIGHT: Objection, Your Honor. I will assert

## J. Alford - Cross-Examination

1 another objection here. Beyond the scope of his report, he  
2 doesn't talk about CVAP at all.

3 THE COURT: Ms. Theodore.

4 MS. THEODORE: He's here testifying about  
5 statistical techniques and redistricting cases. I think one  
6 of the first questions counsel asked him when she was  
7 qualifying him was about his teaching about statistical  
8 analysis, and his entire testimony in this case is about  
9 statistical analysis. I'm going to ask some questions about  
10 his opinions on some points about statistical analysis that  
11 are highly relevant issues in this case.

12 MS. McKNIGHT: It sounds like these questions, Your  
13 Honor, are related to other experts -- a dispute between other  
14 experts in this case that did not involve Dr. Alford.

15 THE COURT: I'll allow a few questions and then when  
16 it gets to be too much of a waste of time, I'll stop it.

17 You may proceed, Ms. Theodore.

18 BY MS. THEODORE:

19 Q. American Community Survey point estimates for Black CVAP  
20 are accompanied by confidence intervals reported as plus or  
21 minus the same number, correct?

22 A. I believe they report them as margins of error.

23 Q. Mathematically if you have a CVAP point estimate above  
24 50 percent, it is more likely than not that the actual CVAP  
25 value is above 50 percent, correct?

## J. Alford - Cross-Examination

1 A. We're talking specifically about the methodology used by  
2 the American Community Survey? In the abstract that's just --  
3 I don't know what that would mean.

4 But if you're saying -- are you talking about an estimate  
5 from the American Community Survey?

6 THE COURT: Well, the process is you don't get to  
7 ask the lawyers question, sadly. It would be a lot more  
8 efficient honestly. So I take your confusion to mean you  
9 don't understand the question. So Ms. Theodore gets another  
10 crack to ask a clear, simpler, straightforward question.

11 THE WITNESS: I'm not sure I have an answer to that  
12 question.

13 BY MS. THEODORE:

14 Q. Let me ask you one step back. If you have a CVAP point  
15 estimate for the percentage of Black CVAP or any other CVAP in  
16 the CVAP population, you can assume that 50 percent of the  
17 expected values will fall higher than that point estimate and  
18 50 percent will fall below the point estimate because the  
19 margin of error is based around a normal distribution,  
20 correct?

21 A. It is not always based around a normal distribution. So  
22 if you're saying if it's based on a normal distribution,  
23 would -- would half the values fall above, half below, that  
24 would be -- that would be correct; but it's not always based  
25 on a normal distribution. There's lots of distributions.

1 Q. Okay.

2 MS. THEODORE: Can we call up your deposition, page  
3 231.

4 BY MS. THEODORE:

5 Q. All right. I asked you at line 4: It's true that if you  
6 have a CVAP point estimate for the percentage of Black CVAP or  
7 any other CVAP in the CVAP population, you can assume that  
8 50 percent of the expected values will fall higher than that  
9 point estimate and 50 percent will fall lower because the  
10 margin of error is based around a normal distribution; is that  
11 true?

12 And you answered: That's true.

13 A. I'd like to see the context, but I suspect we were in the  
14 context of talking about the way it's done by the American  
15 Community Survey. So the way it's done by the American  
16 Community Survey, this is strictly sampling error and the  
17 sampling error is roughly normally distributed. So it would  
18 be true assuming we're talking about an estimate from the  
19 American Community Survey.

20 Q. Okay. And assuming we're talking about an estimate from  
21 the American Community Survey, that was your testimony and it  
22 was truthful?

23 A. That's correct.

24 Q. Okay. And mathematically if you have a CVAP point  
25 estimate above 50 percent, it is more likely than not that the

1 actual CVAP value is above 50 percent, correct?

2 A. Again, assuming you're talking about just a normal  
3 sampling distribution; that's correct.

4 Q. Okay.

5 MS. THEODORE: Can we put that back down.

6 Can you pull that back up, sorry.

7 BY MS. THEODORE:

8 Q. All right. And I asked you: And does that mean  
9 mathematically that if you have a CVAP point estimate that  
10 it's above 50 percent it is more likely than not that the  
11 actual value is above 50 percent?

12 Your testimony was: Correct.

13 And that testimony was truthful, correct?

14 A. Yes.

15 Q. All right. I'm going to turn briefly to  
16 Dr. Collingwood's BVAP analysis. And in that analysis,  
17 Dr. Collingwood simulates the threshold where changes in Black  
18 Voting Age Population within a possible district would produce  
19 a victory for the Black-preferred candidates, correct?

20 A. I think that's a reasonable description of what he did,  
21 as I understand it.

22 Q. All right. And he conducts that analysis by examining  
23 the counties in the demonstration area, correct?

24 A. That's my understanding, yes.

25 Q. And the demonstration area refers to the 12 counties that

1 form the part of the Plaintiffs' Gingles I Demonstration  
2 Districts, correct?

3 A. Again, I'm just taking Dr. -- I think -- I believe at  
4 some point he described it that way, but I, again, I'm not  
5 looking at a map. I don't -- I can't say that's true, but it  
6 is the area that he chose as the demonstration area.

7 Q. All right. Can we call up page -- page 204 of the  
8 deposition and put it next to page 205.

9 You see there I asked you: The demonstration area refers  
10 to the 12 counties in the northeast region that form part of  
11 the Plaintiffs' various Gingles I Demonstration Districts,  
12 correct?

13 And you answered: That's correct.

14 Do you see that?

15 A. Yes.

16 Q. Okay. And you didn't offer any opinion in your report  
17 criticizing Dr. Collingwood's --

18 MS. THEODORE: You can take that down.

19 BY MS. THEODORE:

20 Q. I'll start again, sorry.

21 You didn't offer any opinion in your report criticizing  
22 Dr. Collingwood's decision to conduct his analysis of the BVAP  
23 needed to elect a Black-preferred candidate in this case by  
24 analyzing those counties, correct?

25 A. Correct.

## J. Alford - Cross-Examination

1 Q. And you haven't offered any competing methodology for  
2 determining the BVAP at which a Senate district in the  
3 demonstration area or some other area could elect a  
4 Black-preferred candidate, correct?

5 A. The tables I provide -- the figures I provide are  
6 different than the method that Dr. Collingwood provides. I'm  
7 not using a different area that he's using, but I'm presenting  
8 figures at the precinct level and he's presenting figures at  
9 the demonstration, combined county demonstration area.

10 Q. Okay.

11 MS. THEODORE: Could we pull up page 211 of the  
12 deposition.

13 BY MS. THEODORE:

14 Q. Do you see I asked you: And you haven't offered any  
15 competing methodology for determining the BVAP at which a  
16 Senate district in a demonstration area or some other area  
17 could elect a Black-preferred candidate, correct?

18 MS. McKNIGHT: And there's an objection standing to  
19 that question, Your Honor.

20 THE COURT: Let me see the whole page.

21 MS. THEODORE: I'm sorry?

22 THE COURT: Let me see the whole page.

23 MS. THEODORE: Oh, can you pull the whole page?

24 THE COURT: Let me see the page before...

25 (Pause in the proceeding.)



## J. Alford - Cross-Examination

1 THE COURT: Let me see the next page, please, of the  
2 deposition.

3 (Pause in the proceeding.)

4 THE COURT: I'll sustain the objection.

5 Next question.

6 BY MS. THEODORE:

7 Q. All right. You agree that to figure out the BVAP  
8 percentage at which a district would elect a Black-preferred  
9 candidate in 2024 and future years should be better off going  
10 with more recent rather than older election data?

11 A. I do.

12 Q. Okay. You haven't offered any criticism of the method  
13 that Dr. Collingwood used to reach the conclusion that  
14 47.07 percent is the BVAP percentage where the counties in the  
15 demonstration area would, on average, elect a Black-preferred  
16 candidate, correct?

17 A. I think I've been explicit in suggesting that I agree  
18 with Dr. Collingwood that it's below 50 percent. I agree with  
19 his chart, and it's certainly technically correct that I'm not  
20 disagreeing that that's the average. I don't think the  
21 average is necessarily -- by "average," I mean the mean. I  
22 don't think I've seen the mean used in that way before in a --  
23 in this kind of a simulation expert -- or exercise. I don't  
24 think the mean is the right value to use, but I don't agree --  
25 I don't disagree that that is the average, and he suggests

## J. Alford - Cross-Examination

1 that that average serves that role.

2 You were talking earlier about above and below. Half of  
3 the observations are not above the mean and below the mean;  
4 that most of the observations are below the mean, it's not  
5 normally distributed. So it's -- technically that is the  
6 average, and that is what he says it is. It's not the way I  
7 would do that or the way I've seen other experts do it. And  
8 it's not the way I interpret -- I don't interpret his bar  
9 chart by focusing on the mean as providing a threshold.  
10 Obviously, looking at the chart does not provide that.

11 Q. Dr. Alford, you don't offer any opinion in your report  
12 criticizing the use of the average to report these figures, do  
13 you.

14 A. He reports the average. To what extent he relied on  
15 that, I don't know. All I'm doing is endorsing the bar charts  
16 and saying, as I say in my report, what the bar charts show.  
17 The bar charts show that most of the results are below, well  
18 below 50 and most of the results are below 47.

19 So I'm providing my own understanding of what I see in --  
20 I'm trying to be as charitable as I can, I guess, or not to be  
21 unnecessarily critical. But I don't particularly like that  
22 form of presenting the data, but I'm willing to say that it is  
23 possible to derive from that form a reasonable understanding  
24 of where districts will perform based on BVAP for the  
25 demonstration area, and that's how I interpreted it in my

1 report, and I stand by that interpretation.

2 Q. All right. All right. Let's just move on to Figures 2  
3 and 3 on page 17 and 18 of your report.

4 Okay. Do you agree that it would be -- you agree that it  
5 would be incorrect to extrapolate from these charts that a  
6 Senate district composed of some of the precincts in these  
7 charts could elect a Black-preferred candidate at a particular  
8 BVAP percentage simply because an individual precinct does so  
9 at the same BVAP percentage, correct?

10 A. That's correct.

11 Q. Okay. And you agree that it is not possible to draw a  
12 reliable conclusion about the precise BVAP percentage at which  
13 a district in northeastern North Carolina could be expected to  
14 elect a Black-preferred candidate on the basis of these  
15 figures, correct?

16 A. That's correct. You can't drive that from either these  
17 figures or Dr. Collingwood's figures.

18 Q. Okay.

19 A. Because everything we talked about, you're -- neither of  
20 us is drawing a district. So these are suggestive about what  
21 the inputs would be to a district and what the possibilities  
22 are and what the behavior is, and certainly all of that  
23 suggestive analysis, Dr. Collingwood's, Dr. Barreto's, and  
24 mine, clearly suggest you got the opportunity to draw that  
25 district well below 50 percent; but none of us has drawn a

## J. Alford - Cross-Examination

1 district, so there is no precise estimate of what -- right, we  
2 haven't either simulated districts or drawn districts, so  
3 nobody has produced a precise estimate. We've all just  
4 produced evidence suggestively -- suggestive evidence that  
5 agrees across all three experts about the range in which  
6 you're going to be able to effectively draw a district. And I  
7 think that we all will be confident that we could draw a  
8 district below 50 percent that would reliably perform for  
9 Democrats and therefore candidates of choice of Black voters.

10 It's actually not a very complicated question. If the  
11 White crossover is substantially higher than the Black  
12 crossover, that's all you need to know to know whether a  
13 district needs to be 50 percent. If crossovers are offsetting  
14 or possibly running in a negative direction, you're going to  
15 have to add minority voters to a district.

16 But if 40 percent of a district is Black and 40 percent  
17 of the electorate is Black, we move to the turnout stage, as  
18 Dr. Collingwood has done, if 40 percent of Blacks are turning  
19 out, so if we have 100 voters, 40 of the voters are Black,  
20 they all vote for the Democratic candidate, you got 40  
21 Democratic votes. You've got 60 White voters and they're  
22 voting at -- their crossover is 20 percent, 20 percent of 60  
23 is 12 votes. You add 12 and 40, you get 52; you win the  
24 district. It's just a mathematical fact. Once White  
25 crossover exceeds Black crossover, you have to be moving below

## J. Alford - Cross-Examination

1 50 percent in the performance of the district. And that's  
2 very different than if White crossover was 10 percent, for  
3 example. That would generate six votes and you'd have a  
4 losing district.

5 So once you know that you got crossover vote in the range  
6 of, say, 20 percent as you have in the two -- in SD1 and SD2,  
7 you know that with that crossover, a district around  
8 40 percent Black will start to perform.

9 And if you're talking about the demonstration area, which  
10 is not a district but a much bigger area, if you created a  
11 district the size of the demonstration area with the  
12 characteristics of the demonstration area with crossover at  
13 about 10 percent, it would not perform at 40 percent; it would  
14 perform somewhere around, I hazard guess, 47 percent  
15 mathematically.

16 Again, that doesn't mean that you can't draw a district  
17 within the demonstration area that has higher crossover, that  
18 we do know because the state drew two districts in the  
19 demonstration area, both of which have higher crossover than  
20 that.

21 Dr. Collingwood says you can't draw a district within  
22 that area so hypothetically you just assume that any district  
23 you might draw would have the characteristics of the  
24 demonstration area. That's just factually incorrect because  
25 the two Senate districts do not have that crossover

1 characteristic.

2       Again, once you set Black voting at essentially  
3 100 percent, which we know we have, the only thing that  
4 matters to the -- to the point at which the district becomes  
5 an effective district is the level of crossover; that the  
6 crossover level in SD1 and 2, the district will perform at  
7 40 percent; that the crossover level in any demonstration  
8 area, which is not any district, that performance, that line  
9 will move up to about 47.

10       But again, until you get to 100 percent, a complete lack  
11 of crossover on White voter side, you won't reach a district  
12 that requires 50 percent for Blacks to elect a candidate of  
13 choice, because Blacks are not giving up any votes to Whites.  
14 Every White crossover vote is giving up a vote to be added to  
15 the Black proportion.

16       So even with the very minimal crossover at 49 percent, if  
17 Blacks are giving up two percent, they're giving up a vote and  
18 it's going to cross over and tie the district.

19       And we're just not talking about those -- we're not  
20 talking here about the idea that it's not possible to create a  
21 district with 20 percent crossover because we know those  
22 districts have been created.

23       And, again, I'm not a math whiz or anything, but this is  
24 not a complicated question. And exactly what I'm saying about  
25 the simple math is what's demonstrated by my charts,

## J. Alford - Cross-Examination

1 Dr. Collingwood's charts, by Dr. Barreto's charts, which is,  
2 again, if White voters are keeping all of their votes, they  
3 just need to get some votes to get to 50 percent, and that  
4 some vote is going to be some percentage of the 60 percent of  
5 votes or the 55 percent of votes or the 50 percent of votes.

6 So, I don't know. I guess I struggle to find out what  
7 the controversy is here given that all the experts agree and  
8 that the simple math tells you -- I mean, so if you ask me:  
9 Can I draw a district in this demonstration area where  
10 crossover is going to be 20 percent? I know I can. And then  
11 the question is: You know, what would the Black proportion  
12 need to be in that district for it to work? It would need to  
13 be about 40 percent. And that's what you'd be looking to do.  
14 Can you find a district that's about 40 percent Black in which  
15 case the crossover would work.

16 Again, the reason that it's a function of crossover is  
17 because it's simply a function of the degree of Democratic  
18 vote. And that Democratic vote is known for Black voters to  
19 be near 100 percent and it varies substantially for White  
20 voters from place to place. There is areas where White voters  
21 are voting overwhelmingly Democratic; areas where they're not.  
22 Find the Democrats and draw your district.

23 Okay. I guess another way of saying it, the performance  
24 of districts in North Carolina does not hinge on the  
25 proportion Black; it hinges on the proportion Democrat.

## J. Alford - Redirect Examination

1        Again, I said this before, a district in North Carolina  
2        that is 10 percent Black can perform for Black voters so long  
3        as there are enough Democratic White Democrats in the district  
4        that the district is a Democratic district.

5        Q.     All right.   Dr. Alford, I'm just going to ask you one  
6        very simple factual question, which is:   You didn't offer any  
7        opinion in your report that a district in this region could  
8        perform at 40 percent BVAP or any other specific percentage;  
9        is that right?

10      A.     I -- I talked about a range of percentages.   I talked  
11      about a location of percentages, but not -- something we  
12      haven't actually analyzed in any of this which is exactly what  
13      the precise number would be, and that precise number would  
14      depend, again, because crossover voting varies within the  
15      region and across the state as well, it would depend on the  
16      specifics of how the district is drawn.   There is not such a  
17      single number.

18              MS. THEODORE:   Okay.   Thank you.   No further  
19      questions.

20              THE COURT:   Thank you.

21              Any redirect?

22              MS. McKNIGHT:   Thank you, Your Honor.

## REDIRECT EXAMINATION

24      BY MS. MCKNIGHT:

25      Q.     Dr. Alford, I heard you testify on cross that



## J. Alford - Redirect Examination

1 Dr. Collingwood's analysis in this case was competent. Do you  
2 remember that testimony?

3 A. Yes.

4 Q. Were you referring to his specific analysis of EI that  
5 you replicated?

6 A. Yes.

7 Q. Now, on cross I heard you asked about your opinions in  
8 the Galveston and Robinson cases; do you recall that  
9 testimony?

10 A. Yes.

11 Q. Were those cases reversed and vacated respectively?

12 A. I believe that's correct, yes.

13 Q. Okay. So is it fair to say that in your experience as an  
14 expert in these redistricting cases, how different courts have  
15 applied Gingles, the Senate factors in your opinion have  
16 differed?

17 A. That's correct.

18 Q. And some of the courts have been wrong?

19 A. In my view, yes.

20 MS. THEODORE: Object, Your Honor. That calls for a  
21 legal conclusion.

22 THE COURT: Well...

23 BY MS. McKNIGHT:

24 Q. Dr --

25 THE COURT: I'll say this: From where I sit, having

## J. Alford - Redirect Examination

1 sat here for more than 21 years, just because an Appellate  
2 Court says that they have a different view of the evidence  
3 doesn't mean somebody is necessarily wrong or right; it just  
4 means that that's our system. So the case law says what it  
5 says when you look at it, so it's just how it is.

6 Go ahead. Next question.

7 MS. McKNIGHT: Thank you, Your Honor.

8 BY MS. McKNIGHT:

9 Q. Dr. Alford, on cross you were asked about the 2018 Seat 1  
10 State Supreme Court election; do you recall that?

11 A. Yes.

12 Q. Let's pull up LD59 at page 13. This is table 5.

13 Now, there are two contests in this table that show a  
14 combined candidate for Republican. One is the 2018 SC Seat 1  
15 with Jackson-Anglin; do you see that?

16 A. Yes.

17 Q. And the other is the 2018 Appeals Court 2 Griffin-Ray; do  
18 you see that?

19 A. Yes.

20 Q. Okay. And did you conclude, as Dr. Collingwood did, that  
21 the Black candidate lost in this contest?

22 A. No.

23 Q. Okay. And did you conclude, as Dr. Collingwood did, that  
24 White voters blocked the Black candidate in these contests?

25 A. No.

## J. Alford - Redirect Examination

1 Q. You were asked a great number of questions about  
2 deposition testimony on cross. I'd like to bring up one  
3 example. Could we pull up your deposition at 231 to 232.

4 Now, Dr. Alford, I heard you asked questions about  
5 responses up to line 17 on page 231. Do you recall being  
6 asked those questions?

7 A. Yes.

8 Q. But opposing counsel did not go further down, so let's  
9 make sure your testimony is complete.

10 Did you testify in response to that question at lines 19  
11 and 20: But that's not anybody's test of statistical  
12 significance?

13 A. Yes.

14 Q. And that was your testimony and it was true, right?

15 A. Yes.

16 Q. Okay. Let's turn the page to 232. And let's look at  
17 lines 5 through 10.

18 And here, did you say: That's sort of the equivalent of  
19 kind of a 50 percent confidence interval or something where  
20 one tail 50 percent confidence interval, we don't use that in  
21 the social sciences; we use 95 percent confidence interval.

22 Did you say that?

23 A. I did.

24 Q. And was that your testimony and was it true?

25 A. I would say when I say the social sciences, I think

## J. Alford - Recross-Examination

1 that's generally true of the social sciences, but it's  
2 certainly true of political science; it's certainly true of  
3 economics. Maybe occasionally not true in sociology. But  
4 generally in the social sciences, yes, we use a 95 percent  
5 confidence interval.

6 MS. McKNIGHT: Thank you. No further questions,  
7 Your Honor.

8 MS. THEODORE: Your Honor, I just have one recross.

9 THE COURT: Okay.

## 10 RECROSS-EXAMINATION

11 BY MS. THEODORE:

12 Q. Can we pull up page 231 of the deposition again. I just  
13 want the full answer that counsel just read in the record.

14 THE COURT: Did you get the full answer in the page?  
15 Where it says "A," for you, did you say what's on that  
16 transcript to the best of your memory?

17 THE WITNESS: I'll take a look. So we're talking  
18 about where I said "that's true" or where I said "correct"?

19 BY MS. THEODORE:

20 Q. Counsel asked you about line 19, and I think you only  
21 read the first sentence there and I'd just like to get the  
22 full answer starting on line 19.

23 A. So the answer goes on beyond that.

24 Q. And you testified: That's not anyone's test of  
25 statistical significance, but you're correct. You at least

1 have the advantage of knowing that the area above the point  
2 estimate is 50 percent of the distribution and then whatever  
3 part of it lies between the estimate and exactly 50 percent is  
4 also above 50 percent and together, so any estimate that's  
5 above -- bigger than exactly 50 percent will have slightly or  
6 perhaps profoundly more likely to be above 50 percent than  
7 below it.

8 A. Yes. And then I go on to --

9 Q. But -- I'll finish reading.

10 But again, that would -- that's sort of the equivalent of  
11 kind of a 50 percent confidence interval or something where  
12 one tail 50 percent confidence interval, we don't use that in  
13 social sciences; we use 95 percent confidence interval.

14 That was your full answer at your deposition and that  
15 testimony is correct, correct?

16 A. That is correct.

17 Q. Thank you.

18 THE COURT: Do you want to say anything else? Kind  
19 of tedious getting things read to you, by both sides.

20 And then this can be your last question. Do you  
21 want to say anything else before I excuse you and tell you to  
22 watch your step?

23 THE WITNESS: I very much enjoyed being in your  
24 court. Appreciate it. These are a great group of attorneys.  
25 I worked with them in different places before. These are --

## S. Trende - Direct Examination

1 these are some sharp --

2 THE COURT: That is very true.

3 Please watch your step. There's a step up as you  
4 come off the witness stand and a step down through the gate.

5 The defense may call its next witness.

6 MR. STRACH: Your Honor, the defense calls Dr. Sean  
7 Trende.

8 THE COURT: Please watch your step as you step down  
9 there.

10  
11 SEAN TRENDÉ,

12 having been duly sworn, testified as follows:

13 THE COURT: Good afternoon, Dr. Trende. Once Mr.  
14 Strach takes a seat, he'll have some questions for you -- or  
15 at least one of the lawyers over here will have some questions  
16 for you, and then one of the lawyers over here will have some  
17 questions for you.

18 THE WITNESS: Good afternoon, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. STRACH:

21 Q. Good afternoon, Dr. Trende. What's your full name?

22 A. Sean Patrick Trende.

23 Q. Can you tell us a little bit about your early educational  
24 background?

25 A. I graduated from Yale University with a double degree in

## S. Trende - Direct Examination

1 history and political science. I then attended Duke  
2 University for law school. While I was there, Duke had a  
3 joint degree program where if you went during the summertime  
4 you could also get a Master's degree and I enrolled in that.  
5 So along with my JD, I earned a Master's degree in political  
6 science in 2001.

7 Q. All right. After you graduated Duke, what did you do?

8 A. I clerked for a year for Chief Judge Deanell Tacha on the  
9 Tenth Circuit. I then worked at Kirkland & Ellis in  
10 Washington, DC for three years. I moved to Hunton & Williams  
11 in Richmond in a smaller firm and practiced law there.

12 Q. Did you change careers at some point?

13 A. Yeah. In 2009 my oldest son was diagnosed with autism  
14 and my wife and I had to sort of rearrange our working  
15 commitments to get him to therapy and such, and so I had been  
16 writing part time for a place called RealClearPolitics and the  
17 timing just worked out well and finances worked out well that  
18 we could make it work so I went to work full time as a  
19 political writer.

20 Q. All right. And what is RealClearPolitics?

21 A. RealClearPolitics is a website that we produce that tries  
22 to make available political and polling data to the public.

23 Q. And what do you specifically do at RealClearPolitics?

24 A. So part of what I do is just kind of being involved in  
25 the collaborative process of determining the competitiveness

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1 of how senate and gubernatorial presidential race when  
2 appropriate based on the polling data that's come in. But my  
3 bread and butter is writing about politics. Kind of what I  
4 see as my core mission is taking some pretty complex  
5 statistical ideas and trying to make them available and  
6 understandable to the broader public.

7 Q. All right. As part of your duties at RealClearPolitics,  
8 do you analyze and interpret polling data?

9 A. Yeah. It's not just me. We're a company of 50-plus  
10 people so it is a collaborative effort, but it's a core of  
11 what I do, to interpret polls. We're probably most famous for  
12 our poll average which we produce, which is the average of the  
13 most recent quality polls which have been put out.

14 Q. Right. Have you continued your education since joining  
15 RealClearPolitics?

16 A. Yeah. I wish this trial had taken place before the  
17 national championship game, but I got my Ph.D. from Ohio State  
18 University. I enrolled in their department in 2016.

19 Q. Did you pursue any other degrees while you were enrolled  
20 in the Ph.D. program?

21 A. So before you show up for your Ph.D. program, you usually  
22 do a meeting with your advisor and the department chair; and  
23 during the course of that conversation, they became aware of  
24 what I done for my Master's degree and suggested that for my  
25 statistical coursework I go take it in the actual statistics



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1 department. And about 40 credit hours later in 2019 I emerged  
2 with a Master's degree in applied statistics from the  
3 statistics department.

4 Q. All right. Did you -- specifically, did you take any  
5 polling coursework in the statistics department?

6 A. Yeah. I took a math class in sampling methodology in the  
7 statistics department.

8 Q. And as part of that class, did you study the  
9 interpretation of confidence intervals or error margins?

10 A. Pretty much every class in the stats department you  
11 encounter the proper interpretation of a confidence interval;  
12 but, yes, in that class in particular it was of interest.

13 Q. When did you receive your Ph.D.?

14 A. So I got my Ph.D. in 2023. COVID kind of slowed down my  
15 progress, but I got it done.

16 Q. All right. What was your area of concentration for your  
17 Ph.D.?

18 A. So I actually passed comprehensive exams in the stats  
19 department in both Methods and American politics.

20 Q. What is Methods?

21 A. Methods is applied statistics for social sciences.

22 Q. And what topics relevant to this case, if any, did your  
23 dissertation involve?

24 A. Well, so the ACS is a poll, for all intents and purposes;  
25 and so the second paper that I did on Bayesian statistics.

1 Bayesian statistics are a different way of thinking about  
2 confidence intervals, so that was integrated in that second  
3 paper. The third paper was about communities of interest in  
4 redistricting so that relates -- in the use of simulation, so  
5 the community of interest part can relate to any redistricting  
6 issue.

7 Q. All right. Have you taught college-level classes?

8 A. I have.

9 Q. And have any of those involved survey methods?

10 A. So I've taught survey methods in the political science  
11 department.

12 Q. All right. Does your background and polling and methods  
13 have any applicability to this case?

14 A. Well, so again, I think because this is a case about a  
15 sample it's integrated -- intimately involved in it.

16 Q. So shifting to your -- to another topic. Have you ever  
17 drawn maps for a government entity?

18 A. I have.

19 Q. Tell us about those.

20 A. So it's sort of random, but I was appointed by the  
21 Supreme Court of Belize as their point of -- appointed expert  
22 for their country's version of Baker v. Carr, and part of that  
23 process was drawing acceptable maps in the case in the event  
24 that it was struck down.

25 More recently and domestically, I was one of two Special

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1 Masters appointed by the Supreme Court of Virginia when their  
2 independent redistricting commission deadlocked to produce the  
3 House of Delegates, State Senate, Congressional seats for  
4 Virginia.

5 Q. Have you ever advised any redistricting commissions?

6 A. Yeah. I was appointed by the Arizona Independent  
7 Redistricting Commission as voting rights expert for counsel.

8 Q. All right.

9 MR. STRACH: Can we put LD60 on the screen for us  
10 and go to page 47. And let's go to the next page.

11 BY MR. STRACH:

12 Q. Do you recognize this document, Dr. Trende?

13 A. I do.

14 Q. What is it?

15 A. This is a copy of my CV.

16 Q. Have you testified in Voting Rights Act cases before?

17 A. I have.

18 Q. Have you ever worked for plaintiffs as opposed to defense  
19 in these cases?

20 A. I have.

21 Q. Where was that?

22 A. That was in Michigan.

23 Q. As part of your work in Michigan, did you draw Gingles I  
24 maps?

25 A. I did, Demonstration Districts, absolutely.

## S. Trende - Direct Examination

1 Q. And in any of these cases have you worked specifically  
2 with Census Bureau data?

3 A. Yes.

4 Q. And have you worked with ACS data?

5 A. Yes.

6 Q. And are there any updates to your CV that you need to  
7 make?

8 A. So there are two cases that we discussed at my deposition  
9 where I hadn't -- where I submitted reports but hadn't been  
10 deposed yet: The Hodges case in Florida and the Williams case  
11 here in North Carolina. There's also a case that I can't  
12 believe I left off of it which was the South Carolina  
13 Congressional case with one of the co-counsel for Plaintiffs  
14 here. Not working with him, but the same matter that went up  
15 to the Supreme Court.

16 Q. All right.

17 MR. STRACH: Your Honor, pursuant to Federal Rule of  
18 Evidence 702, we move to tender Dr. Trende as an expert in  
19 American politics with emphasis on redistricting, including  
20 drawing and analyzing redistricting maps, use of U.S. Census  
21 Bureau data, and in political methodology with particular  
22 emphasis on sampling methodology.

23 THE COURT: Okay.

24 BY MR. STRACH:

25 Q. Dr. Trende, did you submit an expert report in this case?

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1 A. I did.

2 Q. We got that -- if we can go to the beginning of LD60.

3 Does this appear to be the report that you submitted in this  
4 case?

5 A. It does.

6 Q. Just being upfront, are there any errors in this report  
7 that you've become aware of that you would like to talk to the  
8 Court about?

9 A. Yes. One of them is a material error that I can't  
10 believe I made. It was discussed by Dr. Collingwood on the  
11 calculation of the error margins. I apologize profusely to  
12 y'all for that. I'd like to apologize to the Court for  
13 putting something in an expert report that was just wrong.  
14 I'm sorry.

15 There are some other errors that you hate to make, but  
16 thankfully weren't as material. There are more colors as I  
17 went along.

18 And then there are things that were classified as errors  
19 that I think are more differences of opinion on how things  
20 should be done.

21 Q. All right. And we may talk about some of those a little  
22 bit later.

23 But does correcting any of these errors, including the  
24 material error, change any of your opinions?

25 A. So I was obviously very worried about that when I heard

## S. Trende - Direct Examination

1 about them, but thankfully they don't change any of the bottom  
2 line opinions in this case.

3 Q. All right. In your report, Dr. Trende, you begin with a  
4 lengthy background section on the ACS data, American Community  
5 Survey data. Why did you start your report there?

6 A. Well, what I find is -- one of the things I always find  
7 myself as an expert is you live this stuff and you breathe  
8 this stuff and you forget not everyone else does and so I  
9 think it's useful to put an overview of exactly what it is  
10 we're talking about in a report.

11 Q. Okay. And you start with different levels at which the  
12 census reports data. Why do you do that?

13 A. Again, we throw around these terms, blocks and block  
14 groups, and maybe people live and breathe them, maybe they  
15 don't, but I thought it was good to have an illustration of  
16 what we were talking about.

17 Q. All right.

18 MR. STRACH: Let's go to page 7 of this report.  
19 Let's blow up Figure 1.

20 BY MR. STRACH:

21 Q. Dr. Trende, this is Figure 1 from your report. Can you  
22 tell us what this is?

23 A. Yes. This is Pasquotank County, North Carolina, with the  
24 counties of the boundaries -- boundaries of the county drawn  
25 in the solid Black line.

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1 Q. What are the Black dashed lines?

2 A. This is just to help give a sense of scale when we talk  
3 about things. The Black dashed lines reflect census tracts in  
4 Pasquotank County.

5 Q. All right. What is the area shaded in gray?

6 A. So the solid gray line is the census tract and the area  
7 that's shaded in gray is one of the two census block groups --  
8 I'm sorry -- contained within that census tract.

9 Q. And what are the white lines?

10 A. So the white lines illustrate the census blocks that are  
11 contained within that block group that's then contained within  
12 the census tract inside Pasquotank County. So just to give a  
13 sense of how these things actually fit together and make it a  
14 less abstract discussion.

15 Q. And what exactly are blocks?

16 A. So blocks are kind of the quirks of the census process.  
17 They're what everything else is typically built out from.

18 Q. All right. In your report you reference a number of  
19 blocks, block groups, and tracts in North Carolina and their  
20 populations. Do you recall that part of your report?

21 A. I do. And I should clarify in that last answer, I said  
22 that the blocks are the quirks of the census process. That's  
23 true of the Decennial Census, not of the American Community  
24 Survey.

25 Q. Okay. Gotcha. And so you're familiar with the part of

## S. Trende - Direct Examination

1 your report where you talk about the actual number of blocks,  
2 et cetera?

3 A. Yes.

4 Q. Are those numbers accurate?

5 A. No. This was something that was brought up in my  
6 deposition. I went back and double-checked and this was  
7 something that was brought in for color, again, to give a  
8 sense of scale, but the numbers on page 6 are not accurate.

9 Q. So those numbers that you reported, the actual number of  
10 blocks, number of block groups, are those important to your  
11 opinion?

12 A. They really aren't. They are something I put in for  
13 color which is why I probably didn't pay as close attention as  
14 I should have but, again, I apologize for that. It's not  
15 right.

16 Q. All right. But irrespective of the numbers, is your  
17 basic description of blocks, block groups, tracts, and  
18 counties, is that, as you described it, is it widely accepted?

19 A. Yes.

20 Q. So let's talk a little bit about the American Community  
21 Survey. What is the ACS?

22 A. So the ACS is an ongoing product produced by the Census  
23 Bureau where they seek to get, you know, a richer dataset of  
24 demographic, economic, cultural data on America.

25 Q. All right. And how is the ACS different from the



1 Decennial Census?

2 A. The Decennial Census is an actual count. It's something  
3 where they endeavor to go out and talk to every person in  
4 America to get particularized counts of Americans.

5 The ACS is a sample, for all intents and purposes, a poll  
6 of Americans to try and get this broader range of  
7 characteristics.

8 Q. Is the ACS once a decade or how often is it?

9 A. So the census is obviously conducted once a decade, but  
10 the ACS is conducted continuously over the course of the  
11 decade.

12 Q. All right. So you mentioned that the ACS is a poll. Do  
13 you criticize reliance on ACS data in all cases?

14 A. No. And I think that's an important distinction. I  
15 mean, I agree that it's a rich source of information for  
16 America and for doing research allocation of funds and those  
17 type of things. I just think there are limitations to the ACS  
18 that aren't present in the Decennial Census that you need to  
19 be aware of when working with it.

20 Q. What are some times when reliance on ACS data might be  
21 reasonable?

22 A. I mean, if you had a -- if you're talking about the  
23 poverty rate in a county and said it was 73 percent, I'd be  
24 highly unlikely to bicker about it being 72.7 percent to  
25 73.3 percent because that actual uncertainty is likely

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1 immaterial. There's just times where that uncertainty does  
2 become material.

3 Q. And to your knowledge, how do the Plaintiffs use that  
4 data here?

5 A. So this is where it becomes a little bit more problematic  
6 is when you're trying to draw a district and make a claim that  
7 it crosses a particular threshold. If you're very, very close  
8 to that threshold, the uncertainty involved in the ACS becomes  
9 very salient.

10 Q. Have you ever been involved in situations where plaintiff  
11 has tried to use CVAP to prove Gingles I where the BVAP  
12 threshold is not also met?

13 A. There's one matter in Alabama where I've seen that, but  
14 that is the only case I'm aware of where I've been involved,  
15 where the BVAP threshold hasn't also been crossed.

16 THE COURT: It's time for us to have lunch, 45  
17 minutes.

18 (The proceedings were recessed at 12:45 p.m. and  
19 reconvened at 1:30 p.m.)

20 THE COURT: I did do the math, just so that y'all  
21 know. By my calculation, the Plaintiffs have 204 minutes  
22 left; the defense has 360 minutes left. So as I said at the  
23 pretrial, once you hit 900 minutes, you're done.

24 You may examine the witness.

25 MR. STRACH: Thank you, Your Honor.

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1 BY MR. STRACH:

2 Q. Dr. Trende, over the course of your report, you identify  
3 four relevant issues with the ACS. Can you very briefly just  
4 hit those four and then we'll talk more in detail about them?

5 A. Yes. So the first point is that the ACS data because  
6 it's a five-year estimate often includes data before the  
7 Decennial Census.

8 The second is that the ACS data comes from error margins,  
9 they are consequential at times.

10 The third is that the ACS error margins are themselves  
11 estimates.

12 The fourth is that the point estimate and the ACS error  
13 margins both rely upon -- frequently rely upon the  
14 disaggregation of block groups.

15 Q. All right. Let's start with number one. How often does  
16 the ACS report information?

17 A. The ACS as, like I said, a continuous product, but it  
18 reports single-year estimates every year and then it's  
19 five-year estimates which are reported to a more granular  
20 level as well.

21 Q. What are the five-year estimates?

22 A. So when we talk about the 2020 ACS data, we're actually  
23 talking about the 2016 to 2020 ACS data. It's the year that  
24 we're talking about and then the four years preceding it.

25 Q. And when are the five-year estimates for the ACS usually

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1 produced or published?

2 A. The general ACS data are generally produced in December,  
3 so the most recent general ACS data we got came out in  
4 December of 2024.

5 Q. What about the CVAP.

6 A. The CVAP is a special tabulation conducted by the Census  
7 Bureau. It's produced separately. It typically comes out in  
8 January or February of the succeeding year.

9 MR. STRACH: Can you pull up LD33.

10 BY MR. STRACH:

11 Q. Dr. Trende, this is Tab 2 in your binder. It'll also be  
12 on the screen.

13 MR. STRACH: Well, Your Honor, of course we would  
14 have a technical issue when I'm up.

15 THE COURT: That's fine.

16 MR. STRACH: I apologize for that.

17 (Pause in the proceeding.)

18 MR. STRACH: Your Honor, while that's getting fixed,  
19 can I hand you a copy of what we're going to be looking at?

20 THE COURT: Yes.

21 MR. STRACH: It's Tab 2.

22 MS. THEODORE: Thank you.

23 BY MR. STRACH:

24 Q. All right, Dr. Trende, do you recognize LD33?

25 A. I do.

1 Q. What is it?

2 A. It's a copy of the census notice from online announcing  
3 the production of the 2022 ACS CVAP five-year data.

4 Q. What's the data on that document?

5 A. January 23rd, 2024.

6 Q. Is this the date the information was made available?

7 A. I believe it is.

8 Q. Can experts begin using the data shortly after it's  
9 posted?

10 A. Yeah. If you go on the second page of this document, you  
11 can see the links, that's what you can use to download the  
12 data in a variety of formats. I know this because  
13 Dr. Collingwood and I were using it in the Washington matter,  
14 Soto Palmer in February and March 2024.

15 MR. STRACH: All right. Your Honor, I think we got  
16 the screen working.

17 THE COURT: All right.

18 BY MR. STRACH:

19 Q. Okay. Looking at the second point you mentioned, which  
20 is at the ACS CVAP estimate or samples and therefore contain  
21 error margins. Just what's the sample in general?

22 A. In common parlance when you talk about a sample, when you  
23 go to the restaurant and get an appetizer sampler, but when  
24 you get the -- think about the idea behind it, it's you don't  
25 want to order a full amount of menu, you just get a little bit

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1 of it. In social science we want to be a little bit more  
2 rigorous about it, but it's the same idea. For some reason  
3 getting the full bite is not efficient or not possible and so  
4 you talk -- to use a part of it to make inferences about the  
5 whole.

6 Q. In general how do we conduct samples?

7 A. So the idea is to -- there are a bunch of different ways  
8 to conduct a sample, but the basic idea is to talk to a random  
9 subsection of the relevant population.

10 Q. All right. With regard to the ACS surveys, if we're only  
11 talking to a couple thousand people out of 10 million North  
12 Carolinians, how can we be sure the answer we get is correct?

13 A. It almost certainly isn't correct. As a matter of fact,  
14 if you look on page 9 of my report, I cite the ACS handbook  
15 which is a publication from the Census Bureau accompanying the  
16 ACS data and it says that estimates derived from the ACS will  
17 likely differ from the values that would have been obtained if  
18 the entire population had been included in the survey.

19 So sample will get you close to the correct answer, but  
20 it's unlikely to get you the exact correct answer.

21 Q. So then what's the point of the sample?

22 A. Well, again, it's expensive and time-consuming to talk to  
23 all 300 million Americans, so it's much more efficient and  
24 manageable to talk to a sample and the math is pretty good  
25 that if you do that well, you'll get pretty close to the

1 correct answer.

2 Q. Will there always be errors in sampling?

3 A. There will.

4 Q. Okay. Can you quantify 100 percent of that uncertainty?

5 A. So there's errors that can be quantified and there is  
6 errors that can't be qualified.

7 Q. Let's talk about the type of errors that can't be  
8 quantified. What types are those?

9 A. So there's different types. Some of the examples we'll  
10 talk about later in the report, but other things some people  
11 will lie either to the questioner themselves, sometimes the  
12 person writing down the answer will make a mistake, sometimes,  
13 for whatever reason, some groups are more excited to respond  
14 to surveys than others so you won't get a representative  
15 sample. Those are all examples of error that are -- that are  
16 in polls that you can't really put a number on.

17 Q. All right. And is there any way to quantify that?

18 A. There really isn't. You hope that the errors cancel each  
19 other out; that the number of people who mistakenly identify  
20 themselves as a citizen is equal to the number of people who  
21 mistakenly identify themselves as a noncitizen, but that's a  
22 hope.

23 Q. All right. What about the types of error that you can  
24 quantify?

25 A. So the types of error you can quantify, then we're

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1 talking about the sampling error, which is the core of what  
2 we're discussing today.

3 Q. How does one quantify the sampling error?

4 A. So the sampling error is something that's usually  
5 expressed through error margins and those error margins can be  
6 used to construct a confidence interval around the point  
7 estimate.

8 Q. How does one calculate an error margin?

9 A. So the error margin has kind of a nasty formula but it's  
10 a function of three factors, simplest form. There's something  
11 called a Z statistic which is basically the degree of  
12 confidence you want; that the confidence interval you build  
13 contains the true population you would get if you talked to  
14 everyone. There's the sample variance which is kind of how  
15 widely distributed your answers are, and then there's the  
16 number of respondents.

17 Q. All right. Is there anything you can do to change the  
18 sampling error?

19 A. So yes and no. The sampling error is something inherent  
20 in the fact that we aren't talking to the entire population.  
21 If you take the world's best pollster, if you take the world's  
22 most incompetent pollster and they survey 450 -- or 475  
23 people, the error margin is going to be 4.5 percent. It's  
24 just inherent in the process.

25 The only thing you can do is either adjust the level of



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1 confidence you want or increase the number of people in your  
2 sample.

3 Q. So if I mention a 95 percent margin of error, what does  
4 that mean?

5 A. So the 95 percent error margin, you conduct your sample  
6 and you get your estimate, that's what we call that point  
7 estimate, 50.14 percent CVAP for District D1. And then the  
8 error margin, the 95 percent error margin, let's say it's four  
9 and a half percent, that means that 95 percent of the time  
10 when you conduct a poll, the true population value falls  
11 somewhere within that range of four-and-a-half points above,  
12 four-and-a-half points below.

13 Q. Is there a standard degree of confidence typical in the  
14 social sciences?

15 A. We typically use a 95 percent confidence interval. There  
16 are instances where you use a 90 percent confidence interval.  
17 The ACS uses a 90 percent interval. But that's kind of --  
18 those are the standards.

19 Q. Is the 95 percent degree of confidence the standard,  
20 methodological standard of your field?

21 A. It is, yes.

22 Q. Are you familiar with lower degrees of confidence being  
23 accepted in the social sciences?

24 A. You never want to say never because there is a voluminous  
25 body of social science production out there, but I can't

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1 recall seeing it.

2 Q. Okay. So what does all of this mean for CVAP use in  
3 redistricting?

4 A. So, again, because the CVAP is effectively a poll, it's a  
5 sample, when we get our point estimates, our estimated degree  
6 of whatever, CVAP or poverty rate or whatever, there's  
7 inherent uncertainty that comes with that point estimate. We  
8 know that point estimate is likely going to differ from the  
9 true population value and we use these error margins to  
10 quantify that uncertainty. Statistics is the mathematical  
11 study of uncertainty, that's the whole point of it and that's  
12 what this is capturing for us.

13 Q. When can that be a problem when using it in  
14 redistricting?

15 A. So where it becomes a problem -- you know, we will talk  
16 colloquially. A poll will come out and we'll say the  
17 president's job approval is 45 percent and we'll just leave it  
18 at that.

19 But where it becomes a problem is where you're making a  
20 direct comparison. If you ask me is the president's job  
21 approval greater than 43 percent, then you have to start  
22 thinking about the error margin. And again, there's some  
23 citations in my report to the ACS handbook on page 10 and 11  
24 where they say the exact same thing, data user should be  
25 careful in drawing conclusions about small differences between

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1 two ACS estimates because they may not be statistically  
2 different. There's a couple of additional cites but...

3 Q. Let me just tie that up a little bit. Did you just  
4 testify that the Census actually warns about ignoring that  
5 uncertainty?

6 A. It does.

7 Q. All right. So let's talk about the third point which is  
8 that the error margins themselves are estimates. Can you  
9 explain that?

10 A. I'll be brief on this because Dr. Collingwood touched on  
11 it. There's a process -- because we don't have -- the Census  
12 Bureau has the survey responses. They can give you precise  
13 answers for any -- with actual addresses. They can give you  
14 precise error margins for anything they want.

15 When we're drawing a new district that doesn't conform to  
16 some existing boundary, we have to add up the groups, so  
17 adding up all the block groups, adding up all the counties,  
18 and that formula doesn't produce a precise confidence interval  
19 or margin of error; it produces an estimate of it.

20 Q. All right. Does the Census publish CVAP error margins at  
21 certain levels?

22 A. So it does. For the ACS it only reports data down to the  
23 block group level; it doesn't report the data down to the  
24 block level. And you'll get precise error margins for block  
25 groups, tracts, counties. It even produces them for existing

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1 State Senate, State House districts, but because we're doing  
2 our own variant, we can't do that precise error margin  
3 calculation.

4 Q. All right. So the fact that it doesn't publish these at  
5 the block level, is that a problem?

6 A. I mean, it complicates things because you can't do the  
7 precise level of estimation and because census blocks -- or  
8 census block groups don't correspond directly with precinct  
9 lines it can really complicate the endeavor.

10 Q. All right. How do you try to solve that? What do you  
11 have to do?

12 A. All right. So if you're -- if you're in a situation,  
13 which we are here, where block groups -- where not all the  
14 block groups line up with the precinct boundaries or the  
15 district boundaries, you have to perform an additional  
16 estimation process of trying to estimate in those split block  
17 groups how much of the relevant population is within the  
18 district and how much of the relevant population is outside  
19 the district.

20 Q. All right. And how does this impact the error margins?

21 A. Well, because you can't dis -- again, Dr. Collingwood  
22 testified to this, but we can aggregate -- we know the math  
23 for aggregating groups, but there's no math for disaggregating  
24 group error margins. So when we disaggregate the population  
25 we lose some of our certainty about the error margin as well.

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1 Q. All right. Are there methodological choices for how to  
2 aggregate jurisdictions to calculate the margin of error, say,  
3 in the Plaintiffs' Demonstration District?

4 A. There are. The whole aggregation-disaggregation process,  
5 there is probably six or seven different ways to do it.  
6 They're all similar. They use the same concept, but there are  
7 methodological choices you have to make.

8 Q. Which choice did you make?

9 A. So the specific -- this is a little different, I think.

10 What we're talking about with the aggregation of blocks,  
11 Dr. Collingwood described this as well, but sometimes you can  
12 aggregate all the block groups in a jurisdiction.

13 Dr. Collingwood suggested -- this is actually something when I  
14 did this report I kind of went back and forth on, because I  
15 hadn't seen it before where you had block groups obviously but  
16 you also had a whole county that was used, and I thought to  
17 myself: Should I do the whole counties and then in the  
18 counties that are split use the block groups or should I use  
19 all the -- aggregate all the block groups? And I went through  
20 the ACS handbook and didn't see an answer to it.

21 So my solution was all the examples I see in the ACS  
22 handbook that I saw at least are using the same levels, so I  
23 just used the same level throughout and aggregated the block  
24 groups.

25 Dr. Collingwood's suggestion is to use the whole counties

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1 when they're available, but then in the counties that are  
2 split, use a different level, use the block groups and  
3 aggregate those in.

4 Q. I think Dr. Collingwood may have said that you get -- you  
5 and he got different error margin estimates. Do you know why?

6 A. So Dr. Collingwood when using the county levels is using  
7 units that the census reports lower error margins for, so that  
8 results in a lower error margin that you get when you  
9 aggregate all the block groups.

10 Q. Is that a problem in your mind?

11 A. So I guess it could have been in this case, but it isn't  
12 because whichever methodological choice you employ, the error  
13 margin includes the 50 percent level, 50 percent is within the  
14 error margin. So even using his calculation of the error  
15 margin, you can't say this district is above 50 percent.

16 I think this is a really interesting question he raises  
17 actually, but whatever the answer, it doesn't matter here.

18 Q. Your fourth point was that precincts in North Carolina  
19 frequently split block groups. Can you explain that concern?

20 A. Yes. So this -- I actually started to answer this, so I  
21 apologize for getting ahead of myself.

22 But in some jurisdiction in North Carolina, the precinct  
23 boundaries, which is what we use typically to draw districts,  
24 don't line up with the block group boundaries. So if you  
25 assign a precinct to a district, you're going to split a block

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1 group, and because the CVAP data is only provided down to the  
2 block group level, you have to figure out what to do with this  
3 split block group now.

4 Q. All right. Can that be done precisely?

5 A. Probably not. We don't know because we don't have  
6 anything to compare this to. There's ways that people come up  
7 with that sound reasonable, we just don't know the degree of  
8 precision that you get out of it.

9 Q. All right. What kind of techniques do people use to deal  
10 with this?

11 A. Yeah. So when I said there's six different ways -- or  
12 six or seven different ways now to do this, that's what I was  
13 referring to, this disaggregation process.

14 The idea is to use the Decennial Census data to weigh the  
15 CVAP data to figure out or come up with an estimate of how  
16 many people are within the district, how many are without.

17 Q. Can you tell us what a point estimate is?

18 A. So, again, the point estimate is this top line number  
19 we've always been talking about with the CVAP, 50.14 percent.

20 MR. STRACH: Let's pull up page 14 of LD60.

21 BY MR. STRACH:

22 Q. All right. This is Figure 2, Dr. Trende from your  
23 report, which is Pasquotank County.

24 In the context of the discussion we're having, what does  
25 this tell us in the context of this particular figure?

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1 A. Yeah. So you can see the black lines, the solid black  
2 lines, those are the block group boundaries in Pasquotank  
3 County. Overlaid over them in dashed blue lines are the  
4 district lines. And so where you can see the dashed blue line  
5 on top of the black line, that's where the district boundaries  
6 or the Pasquotank County line corresponds with the block group  
7 boundaries.

8 But you can see these -- and you can see within the top  
9 portion of the district that there are whole block groups  
10 contained within district -- I think this is District B1 or C  
11 1. I think it's B1. You can see that there are whole block  
12 groups contained within the district. However, you can see  
13 there are areas where the blue dashed lines are kind of  
14 standing alone, and those are instances where the district  
15 boundary is cutting a block group.

16 Q. All right. What's the problem with that?

17 A. Well, again, those block groups have CVAP levels  
18 reported, but we can intuit that -- let's say the CVAP of a  
19 block group is 100 citizens of voting age. Not all of that  
20 100 citizens is going to actually reside within the district.  
21 And since this isn't reported down to the block level, we have  
22 to come up with a way to estimate how many people are within  
23 the district and how many are without.

24 Q. All right. Let's talk about how you do that. Let's turn  
25 to Figure 3, which I think is on the second page and let's



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1 blow up Figure 3.

2 What is Figure 3, Dr. Trende?

3 A. Figure 3 is a block group from Mr. Esselstyn's  
4 illustrative map B1. I pulled one of the block groups out and  
5 kind of used it to illustrate this disaggregation process.

6 Q. All right. So what's the problem that you have to solve  
7 here?

8 A. Well, so, again, the blue dashed lines are the district  
9 boundaries. And as you can see, there's some places where the  
10 blue dashed line overlaps the solid black line, the block  
11 group boundary, that's fine. But you can also see areas where  
12 the blue dashed line kind of cuts in, in the northeastern  
13 portion of the block group. And then another place where it  
14 enters the district in the south central portion of the block  
15 group. So some of the residents in the block group are within  
16 the district and some are outside of the district.

17 Q. What are the thin black lines in this figure?

18 A. So this starts to get into how the disaggregation process  
19 actually works. The thin black lines are the census blocks  
20 from the Decennial Census.

21 Q. All right. And what are the shades?

22 A. So for this, and this is something -- this is called a  
23 choropleth map, and a choropleth map is a kind of map you're  
24 just familiar with where some type of aerial unit is shaded in  
25 by some value of interest.

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1       Here, I've shaded in the census blocks by their percent  
2 BVAP.

3 Q.     So how do you conduct this approximation you've been  
4 talking about?

5 A.     So the way that this works, we know reasonably what  
6 the -- let's say we're trying to figure out the BCVAP of the  
7 block group. Let's say that there's 100 citizens of voting  
8 age in this block group, okay. We want to know how to  
9 apportion it inside and outside. You would turn to the  
10 Decennial Census, look at the blocks that are within the  
11 district, because North Carolina precincts do not split  
12 blocks, and you can say, okay, there are -- of the -- of the,  
13 say, 100 people of voting age that are within the block group,  
14 30 of them live within the portion of the block group that's  
15 within the district. That's the Voting Age Population from  
16 the Decennial Census, which we have precise numbers on.

17       So since 30 percent of the Voting Age Population lives  
18 within the district, we're going to assume that 30 percent of  
19 the Citizen Voting Age Population in the block group also  
20 resides within the district. And then you do a similar  
21 exercise with the Black Voting Age Population. So when we're  
22 talking about the weights, that's what we mean, you're  
23 weighting to -- you're weighting by the census data.

24 Q.     All right. Did you use -- did you -- did you use data  
25 from the Redistricting Data Hub in this report?

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1 A. Yeah. Ultimately I matched the blocks from the census  
2 directly to the shape file I received from Plaintiffs'  
3 counsel, and I downloaded the CVAP data at the block level  
4 from the Redistricting Data Hub.

5 Q. Does that data hub data have any drawbacks that the Court  
6 should be aware of?

7 A. I mean, the Redistricting Data Hub data is something I  
8 use because I figured people use it all the time, it would be  
9 hard to criticize me for it. But like I said, there are six  
10 or seven different ways to do this exercise and the  
11 Redistricting Data Hub is no different. It has a technique  
12 that it uses, it's in my production in a file called  
13 readme.txt that goes through in painful detail exactly how to  
14 do it, but it's still this basic apportionment technique of  
15 using -- of leveraging the Decennial Census data to figure out  
16 how to allocate the CVAP data from the ACS.

17 Q. Does that involve any assumptions that are potentially  
18 problematic?

19 A. You have to assume that the Citizen Voting Age Population  
20 within a block group is distributed the same way as the Voting  
21 Age Population, which can be a problematic assumption. You  
22 know, if one area of a block group has a high level of  
23 noncitizen Hispanic voters, the Voting Age Population is going  
24 to be distributed somewhat differently than the Citizen Voting  
25 Age Population.

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1 Q. All right. Is this apportionment approximation issue, is  
2 that a problem for the error margin?

3 A. It is, because the error margin is a function of the  
4 district population and we aren't entirely sure how many  
5 people are being taken out or put back in, whether that's  
6 right, and because you can't disaggregate an error margin.  
7 When we talk about the error margin, what we're really talking  
8 about is the error margin of all the block groups contained  
9 within the district, not the error margin of the district  
10 itself.

11 Q. All right. Is there any formula for dealing with this  
12 when you're disaggregating units?

13 A. There isn't. And one other thing I should have said  
14 earlier on just coming to mind. Another issue, when do this  
15 disaggregation -- you know, I read the preliminary injunction  
16 order. We know that some of these point estimates, or these  
17 population estimates from the CVAP come with really large  
18 error margins. So a block group may be reported as 100 with  
19 an error margin of plus or minus 200.

20 When you do this aggregation or disaggregation, the  
21 process ignores those error margins. It just takes the 100  
22 citizens reported, treats it as a given value and  
23 disaggregates that 100. So that's, again, more uncertainty  
24 you're adding that we can't really qualify to the error margin  
25 of a -- or to the population of a district.

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1 Q. When we report the error margin for the CVAP, BCVAP in a  
2 district, what are we really reporting?

3 A. It's the error margin for the block groups wholly or  
4 partially within the district.

5 Q. And what is the impact of this fact on a claim that the  
6 district is 50 percent plus one BCVAP?

7 A. Well, again, we have these error margin that -- they're  
8 already estimates that we calculate by aggregating either  
9 counties or block groups, and the fact that we have to fight  
10 over whether to aggregate whole counties or block groups is  
11 just -- you don't have to deal with that with the census but  
12 you do with the CVAP. But you already have this estimated  
13 error margin and then that estimated error margin is probably  
14 off because you're doing it for whole block groups, some of  
15 the population of that, that goes into building that, is not  
16 actually contained within the district.

17 Q. All right. Is there any way of quantifying or knowing  
18 how big of a problem this is?

19 A. There isn't.

20 Q. Is there a known failure rate?

21 A. There is not. This disaggregation technique, because we  
22 don't know the actual values, doesn't have -- to my knowledge,  
23 it doesn't have any published failure rate or error rate.

24 Q. Did you hear Mr. Esselstyn testify this week?

25 A. I did.

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1 Q. Did he dispute anything about this in particular?

2 A. I don't think there are any disputes about the big --  
3 these points. There's disputes about some of the  
4 calculations, like I said, most of which are for illustrative  
5 purposes; but I don't think on the big points that there's  
6 much dispute among any of the experts.

7 Q. All right. Now, Dr. Trende, you've done work as a  
8 Gingles expert for plaintiffs before, correct, as we've  
9 discussed?

10 A. That's right.

11 Q. And that was in Michigan?

12 A. That's right.

13 Q. And you drew Gingles I plans, right?

14 A. I did.

15 Q. Did you use CVAP in that case?

16 A. I did not.

17 MS. THEODORE: Objection, Your Honor. This is  
18 outside the scope of his report.

19 THE COURT: Mr. Strach, is it in his report?

20 MR. STRACH: I'm not sure if it's actually in the  
21 report. It's part of his background experience which, of  
22 course, is in his report.

23 THE COURT: Well, you can answer it. Go ahead.  
24 Let's go.

25 THE WITNESS: I did not use CVAP there.

## S. Trende - Direct Examination

1 THE COURT: Next question.

2 BY MR. STRACH:

3 Q. All right. Dr. Trende, did you analyze any of the  
4 demonstrative maps in your report?

5 A. I analyzed four demonstration maps.

6 Q. Were those A through D?

7 A. Yes.

8 Q. All right. Let's start with map B, as in boy. Let's  
9 look at LD60 on page 20.

10 And we're going to look, Dr. Trende, at Figure 5. With  
11 regard to map B, what's your criticism?

12 A. So map B, first off, is not 50 percent plus one CVAP even  
13 by the point estimate anymore. Even if it were, it would be  
14 within the error margin of that point -- 50 percent would be  
15 in the error margin of that point estimate, so we typically  
16 would not be able to say it was higher than 50 percent plus  
17 one CVAP.

18 Q. Would that be true whether we use your point estimate or  
19 Dr. Collingwood's point estimate?

20 A. I think we have the same point estimate. It's true  
21 regardless of which version of the error margin you use.

22 Q. Let's look at District D1, which is on page 22.

23 And this is Figure 7, Dr. Trende. Do you recall the  
24 estimated CVAP of the district on this one?

25 A. So I think everyone who has calculated a BCVAP estimate

## S. Trende - Direct Examination

1 for 2022 on this has come up with the same answer of 50.14.  
2 percent BCVAP.

3 Q. Now, with regard to the error margin, what result did you  
4 come up with?

5 A. My answer, as I said, in this report is incorrect.  
6 Dr. Collingwood's estimates, which I think are better  
7 estimates, are depending on the methodological choice you  
8 employ, either roughly 1.3 percent or 0.6 percent. I think  
9 it's 0.58.

10 Q. All right. So using either one, would that change your  
11 conclusion that there's not adequate evidence that District D1  
12 is majority CVAP?

13 A. It doesn't. Either way the confidence interval you  
14 construct from 50.14 is going to include that 50 percent  
15 threshold and then some. So you wouldn't typically be able to  
16 say in our field with a reasonable degree of scientific  
17 certainty that the district is 50 percent plus one BCVAP.

18 Q. All right. So let's look at map A, we're going to look  
19 at Figure 8 on page 26. And what sort of map is this, Dr.  
20 Trende?

21 A. So this is a choropleth map. Again, that's just taking  
22 aerial units and shading them by some value of interest. Here  
23 I'm shading them by Black Voting Age Population. And it gives  
24 you a sense of the distribution of the Black Voting Age  
25 Population and White Voting Age Population -- no. In this



## S. Trende - Direct Examination

1 instance of non-White Voting Age Population within the  
2 district. So this is at the block level. I'm colorblind.  
3 This is a color -- I know it's a weird color scheme, but this  
4 is one I can see.

5 So the yellow is down at 30 percent or lower. The, I  
6 guess, dark purple is 70 percent or higher. And as it goes  
7 through these different gradations, it just gives you a sense  
8 of the distribution.

9 Mr. Esselstyn makes a point which is well-taken, I didn't  
10 define what white is. White is an area where a census block  
11 is empty.

12 Q. Okay. And these gradations that you mentioned, is there  
13 a particular term of art for those?

14 A. I always heard the term the bins that we employ, how you  
15 bin the data for displaying it.

16 Q. Is that B-I-N, bin?

17 A. Yes.

18 Q. Okay. Now, why did you choose to have a range from  
19 30 percent to 70 percent?

20 A. So this is one of those things where, you know, data  
21 present -- data visualizations always involve judgment calls  
22 and one of the judgment calls in this type of map is how  
23 you're going to create your bins.

24 I found that people tend to be most interested in this  
25 voting rights area in gradations occurring around the

## S. Trende - Direct Examination

1 50 percent threshold. You could create bins that stretch from  
2 0 to 100 percent. You could, you know, make the bins really  
3 wide. If you make it too wide, they won't actually include  
4 the 50 percent threshold as a cut point. If you make them too  
5 small, well, then you just overwhelmed your map with bins that  
6 you can't tell the color difference. So I truncated them at  
7 30 to 70. I know that some of Mr. Esselstyn's map he  
8 truncates them at 50 percent and anything above 50 percent is  
9 the same color.

10 Like I said, it's a judgment call. And one of the nice  
11 things about discovery is we produce our data and code to the  
12 other side so if they think that a different binning system  
13 would give a different impression, they can reproduce that.

14 Q. All right. Let's look at Figure 10 on page 28. What  
15 kind of map is Figure 10, Dr. Trende?

16 A. So in the text I call this a dot density map which is the  
17 technical name for it. It's also sometimes referred to as a  
18 dot plot.

19 But this is District A1. And here, I've taken one blue  
20 dot to represent 10 Black residents of voting age; one orange  
21 X to represent 10 White residents of voting age.

22 Q. All right. Technical question: How do you determine the  
23 size of the Xs and the dots?

24 A. There is a shape parameter within the R code -- or a size  
25 parameter within the R code that determines the size of the

## S. Trende - Direct Examination

1 dots.

2 Q. And what's the size of an X on your dot density maps  
3 here?

4 A. One.

5 Q. What are the size of the circles on this map?

6 A. One.

7 Q. So you used one for both?

8 A. I set the parameters the same. I could have set a  
9 smaller size parameter for X, but no matter what you do you're  
10 going to take in fire and I thought that if it was clear that  
11 I had selected a parameter and somehow the number of pixels  
12 didn't come out the same, I'd be criticized and have a  
13 stronger case that I was manually setting that size parameter,  
14 so I just set them at their defaults, which is one.

15 Q. All right. And why do X's and dots rather than two  
16 different dots?

17 A. I'm colorblind. So in my experience when you have dots,  
18 especially if you print out on a black and white printer, it's  
19 unintelligible.

20 Q. Okay. Are there different ways to do this and do you  
21 have any thoughts on whether that's an issue?

22 A. Again, I read the criticisms -- I've read a lot of  
23 criticisms coming from different angles on these things and  
24 there's a lot of different ways you can do this. And my kind  
25 of takeaway is the same, I think these are judgment calls and

## S. Trende - Direct Examination

1 we produce the code and the data; and if there really is a  
2 material difference by producing it a different way, you can  
3 always reproduce the maps with a different parameter.

4 Q. All right. Let's look at Figure 12 on page 29. What is  
5 this?

6 A. So this is the choropleth map of the VTDs in District B1,  
7 so it's shaded by the percent BVAP. Again, gives you a sense  
8 of the distribution. And these choropleth maps are useful too  
9 because most of the time when you're drawing maps you have the  
10 precinct in front of you so if you had the BVAP filter turned  
11 on you would see something like this.

12 Q. This is District B1, correct?

13 A. This is District B1, correct.

14 Q. So what's interesting, if anything, to you about this  
15 map?

16 A. So to me, it's that -- we can debate whether it's an arm  
17 or just an appendage and whether it has a shoulder or not, but  
18 it's that that arm to me is reaching over into Elizabeth City  
19 through a pretty heavily White area to kind of scoop out the  
20 Black population of Elizabeth City.

21 Q. Okay. Let's look at Figure 14 on page 31. What is  
22 Figure 14, Dr. Trende?

23 A. This is another choropleth map of the BVAP percentage at  
24 the block level in Pasquotank County, and so you can see the  
25 White blocks or empty blocks, you can see the district

## S. Trende - Direct Examination

1 boundaries, and then the gray line is Elizabeth City.

2 Q. All right. Do you know what percentage of the Black  
3 population of Pasquotank County is included in District 1?

4 A. About 81 percent.

5 Q. In these dot plots that you do, Dr. Trende, do you  
6 include the White population?

7 A. I do.

8 Q. Why don't you include the Native-American population?

9 A. Well, there's a couple reasons. The first reason is this  
10 is not -- to my understanding not a coalition claim, so we're  
11 interested in Black population.

12 The second thing, though -- I think there's a couple ways  
13 you might interpret these or use these dot density maps. I  
14 think for understanding how the district was drawn, the  
15 choropleths are useful. The dot density maps give you a sense  
16 of distribution of the population. And Gingles I focuses  
17 entirely on the distribution of the minority population.

18 It's -- you know, you have to produce -- you have to show that  
19 there's a minority population, there can be a majority of the  
20 population in the district that is geographically compact  
21 enough to exist in a reasonably configured district. So this  
22 shows the compactness or lack thereof of the minority  
23 population within the district. That's what we're focused on.

24 But, again, if you really think including the  
25 Native-American population changes the interpretation of the

## S. Trende - Direct Examination

1 dot density map, it's easy to produce. I just -- I honestly  
2 don't think it does here.

3 Q. All right. In the dot density maps that you did, why did  
4 you put the blue dots on top of the orange X instead of the  
5 other way around?

6 A. Well, again, the blue dots represent the Black population  
7 which is what we're talking about in this case. So the orange  
8 pop -- when I initially did these dot density maps, it was  
9 just the minority population and the complaint was, well, you  
10 don't get a sense of how the overall population is  
11 distributed. So, fine, we'll use orange dots for the White  
12 population which gives you a sense of what parts are  
13 completely empty and what or not.

14 Q. Okay. Let's look at Figure 21 on page 38 of your report.  
15 What is Figure 21?

16 A. So this is District C1. This is, again, the block level  
17 depiction of Vance County with District C1 and 11 line  
18 superimposed.

19 Q. All right. And what's this labeled one, what is that?

20 A. That a district -- the portion of the county that's  
21 within District 1.

22 Q. Okay. Did you calculate the percentage of the Black  
23 population in Vance county placed in District 1?

24 A. I came up with 63 percent, which I think is what Mr.  
25 Esselstyn reported when he was on the stand.

## S. Trende - Direct Examination

1 Q. And is the City of Henderson in this map split?

2 A. It is split.

3 Q. In your report did you characterize this portion of one  
4 that comes into Vance County in any particular way?

5 A. Yeah. I said it splits the White population from the  
6 Black population. You know, to me, obviously, I didn't intend  
7 to say it's a perfect split. There's very few completely  
8 homogenous precincts, but I think as a more general statement  
9 I think that's accurate.

10 Q. All right. If we can pull up PX147 at page 27. All  
11 right, Dr. Trende. Have you seen this figure before?

12 A. I have.

13 Q. What is this figure, to your knowledge?

14 A. So this is Mr. Esselstyn's suggested way to produce the  
15 dot plots.

16 Q. Does the way Mr. Esselstyn do it change any of your  
17 opinions in this case?

18 A. I mean, it doesn't. To me it just makes the kind of blob  
19 of blue dots in Henderson more prominent and look like the arm  
20 is coming in really to scoop that section out. But, again,  
21 maybe other people see it a different way. I think this is  
22 less helpful for Plaintiffs.

23 Q. All right. Let's look at paragraph 60 of this PX147. In  
24 this paragraph, Dr. Trende, Mr. Esselstyn complains that you  
25 refer to over 11,000 of those Black residents live at the top

## S. Trende - Direct Examination

1 of the arm that extends into and splits Pasquotank County to  
2 take in Elizabeth City and raises a concern that he could not  
3 get that number from the Black population of Pasquotank  
4 County. Can you explain that?

5 A. Yeah. So this is one where I'll admit the wordsmithing  
6 could have been a little clearer. It came up in the  
7 deposition. But if you add up the portion of the district  
8 that's in Pasquotank County and Gates, which is kind of the  
9 shoulder of that portion of the district, it's 11,000 Black  
10 residents.

11 Q. All right. Dr. Trende, I'm just going to now show you  
12 some exhibits.

13 Can we pull up LD34. Dr. Trende, do you know what LD34  
14 is?

15 A. Yes.

16 Q. What is it?

17 A. So this is a depiction from the Census Bureau webpage of  
18 initial addresses and sample select and final interviews for  
19 the ACS.

20 Q. Have you personally reviewed this source?

21 A. I have.

22 Q. Does this appear to be a true and accurate copy?

23 A. Yes.

24 Q. Let's put up LD35.

25 Do you know what this is?



## S. Trende - Direct Examination

1 A. Yeah. This is the same document but for North Carolina  
2 specifically.

3 Q. Have you personally reviewed this source?

4 A. Yes.

5 Q. Is it a true and accurate copy?

6 A. Yes.

7 Q. Let's put up LD36.

8 What is this?

9 A. This is the response rates, reasons for not responding  
10 for housing units in the United States from the U.S. Census  
11 Bureau.

12 Q. Have you personally reviewed this source?

13 A. Yes.

14 Q. Is this a true and accurate copy of it?

15 A. Yes.

16 Q. Let's pull up LD37.

17 Do you know what this is?

18 A. Yes. This is the definition of item allocation rates  
19 from the Census Bureau.

20 Q. All right. Have you personally reviewed this source?

21 A. Yes.

22 Q. Is it a true and accurate copy?

23 A. Yes.

24 Q. Do you recognize LD38? Let's put up LD38.

25 What is this?

## S. Trende - Direct Examination

1 A. This is item allocation rates 2019 to 2023.

2 Q. All right. Have you personally reviewed the source?

3 A. Yes.

4 Q. Does this appear to be a true and accurate copy?

5 A. Yes.

6 Q. All right. Let's put up LD39.

7 What is this?

8 A. This was a census announcement from 2021 about changes to  
9 the 2020 ACS one-year estimates.

10 Q. All right. Have you personally reviewed this source?

11 A. Yes, I'm very familiar with this one.

12 Q. Is this a true and accurate copy of it?

13 A. Yes.

14 Q. And finally LD40.

15 A. Yes. I've seen this before.

16 Q. All right. What is it?

17 A. It's a census publication about the margins of error in  
18 the five-year estimates if data collected in 2020 is included.

19 Q. And have you personally reviewed this source?

20 A. Yes.

21 Q. Is this a true and accurate copy?

22 A. Yes.

23 MR. STRACH: Thank you, Your Honor. I don't have  
24 any further questions at this time.

25 I will move in some exhibits when it comes back to

## S. Trende - Cross-Examination

1 me, if that's all right.

2 THE COURT: That's fine.

3 Cross-examination.

4 CROSS-EXAMINATION

5 BY MS. THEODORE:

6 Q. Good afternoon, Dr. Trende. My name is Elisabeth  
7 Theodore. We met via zoom at our deposition -- your  
8 deposition.

9 Dr. Trende, you're here testifying as an expert in  
10 sampling methodology about the importance of considering  
11 margins of error in a sample survey like the American  
12 Community Survey, correct?

13 A. Correct.

14 Q. And every margin of error you calculated in this case for  
15 Black CVAP was incorrect; isn't that right?

16 A. That's right.

17 Q. Before this case the only time you previously calculated  
18 margin of error associated with CVAP point estimates was in  
19 the Stone versus Allen case, correct?

20 A. Correct.

21 Q. That is also known as the Alabama State Conference of the  
22 NAACP versus Allen?

23 A. I'll accept your representation. I know it as Stone.

24 Q. And you testified in that case in November of 2024,  
25 right?

## S. Trende - Cross-Examination

1 A. I will agree with you.

2 Q. Okay. And the margins of error that you calculated for  
3 CVAP point estimates in that case were also wrong, isn't that  
4 correct?

5 A. That's right.

6 Q. So in every case in which you offered expert testimony to  
7 a court about margins of error for CVAP calculations, your  
8 margins of error have been wrong?

9 A. That's right.

10 Q. In addition to incorrectly calculating the margins of  
11 error in this case, you've made other errors in your report,  
12 in this case, is that right?

13 A. That's right.

14 Q. Let me -- well, let me -- let me just ask one more  
15 question. You didn't identify the error in your margin of  
16 error calculations yourself in this case, did you?

17 A. No, no. It was pointed out in the reply reports, I  
18 think.

19 Q. And similarly in the Stone case, you didn't identify the  
20 margin of error yourself, did you?

21 A. That's right.

22 Q. It was pointed out to you by counsel when you were being  
23 examined on the stand; isn't that right?

24 A. Yes.

25 Q. Let's turn to page 6 of your report. And I think you can

## S. Trende - Cross-Examination

1 see that on direct examination that the numbers in that  
2 paragraph that starts, "counties are then further broken down  
3 into census tracts," those numbers are wrong; isn't that true?

4 A. That's right.

5 Q. And you didn't identify those errors yourself, did you?

6 A. No.

7 Q. I pointed them out to you at the deposition, correct?

8 A. Right.

9 Q. Okay. Let's turn to page 17 of your report. Actually,

10 let's turn to page 10 of your report. There's a sentence

11 there that says -- you're talking about the 90 percent

12 confidence interval, and there's a sentence there that says,

13 "We just know that as we keep taking polls, our population

14 value will fall within the confidence interval one time out of

15 10." Do you see that?

16 A. Yeah, that's a typo. It should be nine times out of 10.

17 Q. Okay. Let's turn to page 17 of your report. This is

18 where you describe how to disaggregate CVAP data from the

19 block group level to the block level, correct?

20 A. Correct.

21 Q. And you don't dispute that the precise numbers you

22 provide on this page are wrong, do you?

23 A. No.

24 Q. Okay. Let's turn to page 23 of your report and put it

25 side-by-side with page 24. And those -- I'll just ask another

## S. Trende - Cross-Examination

1 question. Those errors on page 17 of your report, you didn't  
2 notice them yourself, did you?

3 A. No.

4 Q. Mr. Esselstyn pointed them out in his rebuttal report?

5 A. That's right.

6 Q. Okay. So on page 23 you see there's a paragraph  
7 starting, "even using the 2020 data" that crosses over on to  
8 page 24?

9 A. Yes.

10 Q. And midway through that paragraph you say Mr. Esselstyn  
11 reported Black CVAP for District B1 is 50.19 percent and  
12 that's using the 2020 five-year figures; do you see that?

13 A. Okay.

14 Q. And Mr. Esselstyn calculated that number in his report,  
15 right?

16 A. I don't remember that, but I'll accept -- I believe you.

17 Q. Well, you wrote there that Mr. Esselstyn reported Black  
18 CVAP?

19 A. Oh, yeah, yeah. Okay. In his first report, yeah.

20 Q. Okay. Other than that number, which Mr. Esselstyn  
21 calculated, the numbers you provide in this paragraph are  
22 wrong, aren't they?

23 A. The error margins are wrong, yeah.

24 Q. The next paragraph of your report on page 24 starts,  
25 "using the 2022 CVAP data." Do you see that?

## S. Trende - Cross-Examination

1 A. Yeah.

2 Q. The second sentence states that the Black CVAP point  
3 estimate is 50.14 percent; do you see that?

4 A. Yes.

5 Q. And that's a number that was reported in Mr. Esselstyn's  
6 report?

7 A. We both calculated that, but yes.

8 Q. And the rest of the numbers in that paragraph are numbers  
9 that only you calculated, right?

10 A. Yes.

11 Q. And all of the rest of the numbers in that paragraph are  
12 incorrect, aren't they?

13 A. That's right. The error margins are incorrectly  
14 reported -- calculated in this report.

15 Q. Okay. And also the numbers in that final sentence that  
16 starts, "for 2020 the block groups," those numbers are wrong  
17 too, aren't they?

18 A. Oh, yeah, that's a carryover from the last paragraph,  
19 yeah, that's right. That's right. We agree for 2022 the  
20 BCVAP is 50.14.

21 Q. Well, no, Dr. Trende. We're talking about -- that's your  
22 calculation of BCVAP for the total block groups, right?

23 A. Yeah. I thought Mr. Esselstyn and I were using different  
24 definitions of BCVAP there, but... I thought that's where that  
25 disagreement came from, but whichever. We agree that the

## S. Trende - Cross-Examination

1 district itself is 50.14 percent BCVAP.

2 Q. Do you recall at your deposition I asked you, the final  
3 sentence of this paragraph says -- starts, "For 2020 the block  
4 groups do have an estimated BCVAP above 50 percent,  
5 50.2 percent, but for 2020 they do not (49.5 percent)."

6 And then I asked you: Can you say with confidence that  
7 those numbers are correct?

8 And you said: The specific numbers are not correct.

9 Do you recall that?

10 A. No, but I believe you.

11 Q. And that was truthful testimony at the deposition?

12 A. Yes.

13 Q. Okay. So let's turn to page 4 of your report. You say  
14 on this page that all opinions and findings are given to a  
15 reasonable degree of scientific certainty typical of my field,  
16 do you see that?

17 A. Yes.

18 Q. And that was wrong too, wasn't it?

19 A. No.

20 Q. Your testimony is that the incorrect margins of error  
21 that you calculated in this case were given to a reasonable  
22 degree of scientific certainty testimony typical of your  
23 field?

24 A. I don't think if you make an error in the report that it  
25 invalidates the general sentence from an expert report about



## S. Trende - Cross-Examination

1 scientific certainty, but I concede that those are errors  
2 within it.

3 Q. All right. Let's go to call up PX209, page 6. That  
4 formula in the middle there with a six next to it that follows  
5 the words if we define the proportion as  $\hat{P}$  equals  $\hat{X}$  over  
6  $\hat{Y}$ , that was the formula you were supposed to use to  
7 calculate margins of error in this case, correct?

8 A. Yeah. That's the proportion that I made a mistake on.

9 Q. And let's put up next to it PX210, page 10. Do you  
10 recognize PX210 as part of your code?

11 A. Yes.

12 Q. All right. Around there where it says  $D1_{CVAP}$  and then  
13 it has mutate open parentheses  $MO$  equals one over  $CVAP$ . You  
14 can -- all right.

15 And your code inverted Black  $CVAP$  and total  $CVAP$ ; is that  
16 right?

17 A. That's right.

18 Q. So where the numerator in the Black  $CVAP$  proportion was  
19 supposed to go you put the denominator?

20 A. Yes. I made a mistake.

21 Q. All right. Big mistake, isn't it?

22 A. Oh, the error margin results is wrong.

23 Q. Yeah. Okay. And that wasn't the only mistake in that  
24 formula you made, was it?

25 A. Right. There's the squared term that Mr. -- that

## S. Trende - Cross-Examination

1 Dr. Collingwood points out.

2 Q. You didn't square a different term, that P with a hat  
3 over it?

4 A. Right.

5 Q. You were supposed to square that term?

6 A. Yes.

7 Q. Okay. And the errors that you made substantially  
8 increase the margin of error in favor of your client, correct?

9 A. They did increase the error margins, that's right.

10 Q. Dr. Collingwood reported that you also made an error in a  
11 different formula that's used to aggregate error margins  
12 related to individual CVAP subgroups, correct?

13 A. Yeah. That was a really stupid one.

14 Q. Stupid on your part, you mean?

15 A. Yeah.

16 Q. And with respect to that formula, you also failed to  
17 square various numbers in that other formula that's part of  
18 the CVAP calculations?

19 A. That's right.

20 Q. Okay. Your margins of error calculations and other  
21 calculations in your report depended on accurately determining  
22 which block groups were contained in the Demonstration  
23 Districts, correct?

24 A. Yeah, that's right.

25 Q. And Dr. Collingwood concluded that you included block

## S. Trende - Cross-Examination

1 groups that were entirely outside of Demonstration Districts B  
2 and D, correct?

3 A. That's right.

4 Q. And you don't dispute that conclusion, do you?

5 A. Yeah, I don't dispute it. I ran the code again in R and  
6 it identified those block groups as being within. I took your  
7 suggestion to load it into days redistricting, but  
8 unfortunately days redistricting doesn't provide the block  
9 groups.

10 It ultimately doesn't change my ultimate opinions and my  
11 takeaway from this and from now on I will always request the  
12 block assignment files which would have resolved this; but no,  
13 I don't dispute it.

14 Q. Okay. Let's talk about your methodology for calculating  
15 margins of error. You chose to aggregate the margins of error  
16 for every block group in every county that you believed were  
17 contained in the Demonstration Districts, correct?

18 A. Correct.

19 Q. And you knew that margins of error at the block group  
20 level are going to be generally higher than margins of error  
21 at the county level, right?

22 A. Well, yeah, of course. They're smaller populations.

23 Q. Most of the population of Demonstration District B and D  
24 is in whole counties, right?

25 A. That's right.

## S. Trende - Cross-Examination

1 Q. Because Demonstration Districts B and D split only one  
2 county?

3 A. That's right.

4 Q. And you thought about combining the margin of error that  
5 the Census Bureau reported directly at the county level for  
6 purposes of calculating the margin of error for the majority  
7 of the population in the Demonstration Districts, correct?

8 A. Yeah, I thought about using the whole counties.

9 Q. Okay. And your method required aggregation of many more  
10 different estimates; is that fair to say?

11 A. Yes.

12 Q. Okay. Because instead of taking a handful of counties  
13 and a few block groups from part of a county, you were taking  
14 the margin of error estimates for all the block groups and all  
15 the counties?

16 A. That's right.

17 MS. THEODORE: Troy, if you can pull down 210 but  
18 keep up 209.

19 BY MS. THEODORE:

20 Q. Okay. And -- why don't we go to the first page of this  
21 document.

22 This document here, PX209, that's the Census Bureau  
23 handbook that you relied on to calculate margins of error,  
24 correct?

25 A. Right.

## S. Trende - Cross-Examination

1 Q. Can we go to page 61 of that, I think it's the third  
2 page. Okay.

3 Do you see there that the Census Bureau says, "Users are  
4 encouraged to work with the fewest number of estimates  
5 possible?"

6 A. Yes.

7 Q. Okay. So you didn't work with the fewer number of  
8 estimates possible, did you?

9 A. That's right.

10 Q. All right.

11 MS. THEODORE: Can we go back to the first page of  
12 that, Troy.

13 BY MS. THEODORE:

14 Q. And you testified on direct that the reason you chose to  
15 add up all those block groups was that you hadn't seen any  
16 indication in the Census Bureau handbook that it was  
17 appropriate to combine estimates from different geographic  
18 levels, correct?

19 A. That's right.

20 Q. And this first page here says, "Aggregating data across  
21 geographic areas," correct?

22 A. Okay, yes. I see that.

23 Q. Yeah. It's in the bold under calculating --

24 A. Well, it's italicized. It's not the point heading, but I  
25 see that now.

## S. Trende - Cross-Examination

1 Q. And the example that the Census Bureau gives in Table B1  
2 aggregates estimates from one city and two counties; is that  
3 correct?

4 A. Well, yeah. But, as you know, in Virginia, the cities  
5 are freestanding are the equivalent of counties.

6 Q. Your testimony is that the city is the equivalent of a  
7 county?

8 A. As I recall, Alexandria City does not exist within a  
9 county. It's its own unit.

10 Q. Understood. But a city is not the same as a county,  
11 correct?

12 A. There is no county for Alexandria City. It's the highest  
13 level in Virginia. I mean, that's one of the most confusing  
14 things I think people who move to Virginia learn.

15 Q. Is your testimony that there's some mathematical reason  
16 why it would be appropriate to combine Alexandria City with  
17 Arlington County, but it wouldn't be appropriate to combine a  
18 block group that's outside of a county with a margin of error  
19 for that county?

20 A. Because Alexandria City does not exist within a county.  
21 There is no county.

22 Q. Do the block groups in Pasquotank County that are split  
23 exist within the counties that are kept whole in Demonstration  
24 District B and D?

25 A. No, but they exist within a county. They all exist

## S. Trende - Cross-Examination

1 within a county. You can't -- for something that  
2 Dr. Collingwood and I agree as a methodological choice, you  
3 can't choose to do the whole county for Alexandria City, you  
4 and I both know this. There is no county that Alexandria City  
5 exists in. If you want to combine Alexandria City with a  
6 county, you have to do that exercise.

7 Q. Dr. Trende, can you think of any reason why it would be  
8 appropriate to combine a block group with another block group,  
9 but not combine a block group with a county for purposes of  
10 the margin of error formula?

11 A. No. No. Like I said, I thought about it and I thought  
12 about it both ways. I just decided to keep the same units for  
13 the entire exercise. And thankfully, it doesn't change the  
14 answer.

15 Q. Are all block groups the same size geographically?

16 A. No.

17 Q. So when you're combining block groups, you're combining  
18 geographic regions that are of a different physical area,  
19 aren't you?

20 A. Yes.

21 Q. And when you're combining block groups, you're combining  
22 geographic regions that have different populations, correct?

23 A. That's right.

24 Q. Okay. You agree that the Black CVAP percentage margin of  
25 error for each county is known based on information reported

## S. Trende - Cross-Examination

1 directly from the Census Bureau, correct?

2 A. Yes.

3 Q. And Dr. Collingwood in his rebuttal Table 2 shows that  
4 your method of combining block groups if applied at the county  
5 level would produce margins of error that are significantly  
6 higher than the known Black CVAP percentage margin of error  
7 reported by the Census Bureau at the county level; isn't that  
8 true?

9 A. Yeah. That's why if you take the methodological choice  
10 to do whole counties and then block groups, you get the .6  
11 margin of error which still includes 50 percent. So whichever  
12 you do, doesn't change the ultimate answer here.

13 Even if Dr. Collingwood is entirely correct and even if  
14 it's not a methodological choice, the error margin is still  
15 going to include 50 percent, which is the bottom line. I  
16 think you're really missing the forest through the trees here.

17 Q. You agree that the American Community Survey from the  
18 Census Bureau is the only source of CVAP data?

19 A. It is the best that you can do. It's just one of those  
20 instances where the best that you can do might not be good  
21 enough.

22 Q. It's used to allocate trillions of dollars to communities  
23 within the United States; is that true?

24 A. Absolutely.

25 Q. You yourself -- you agree that the Redistricting Data Hub



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1 is a reliable source for redistricting data, correct?

2 A. Yeah. It's still doing the disaggregation process and  
3 still -- that all of us do, a variation of it, but I'm sure it  
4 did its calculations correctly.

5 Q. You yourself have previously used CVAP data to calculate  
6 the minority population of a potential majority-minority  
7 district in your work as an expert, correct?

8 A. Well, not for Gingles I purposes, but I've employed it in  
9 cases, yeah.

10 Q. And you would agree that it's common for experts in VRA  
11 cases to use CVAP data from the American Community Survey that  
12 is disaggregated down to the block level, correct?

13 A. Like I said, I've only seen it once in a pending case  
14 where the VAP threshold is not also crossed, but yeah, I have  
15 seen the CVAP data used a lot, mostly with Hispanic  
16 populations.

17 Q. Okay. And do you recall at your deposition I asked you:  
18 Would you agree that it's common for experts in VRA cases to  
19 use CVAP data from the American Community Survey that is  
20 disaggregated down to the block level, and you responded sure?

21 A. Yeah. I think it's commonplace, but I've only seen it  
22 one other time in an instance where the VAP threshold hasn't  
23 also been crossed. Those are contradictory.

24 Q. You served as an advisor to the Virginia Supreme Court in  
25 connection with redistricting in 2021, correct?

## S. Trende - Cross-Examination

1 A. I was a Special Master. I guess that's an advisor, but  
2 sure.

3 Q. And you wrote in a memo to the Virginia Supreme Court  
4 that, quote, "The presence of noncitizen Latinos and  
5 Asian-Americans in a district can raise the Black CVAP share  
6 above the Black VAP share making it a useful metric for  
7 assessing a district's actual electorate."

8 Did you write that?

9 A. Yeah, it can do that. But that wasn't in the context of  
10 Gingles I. We were trying to assess how a district would  
11 perform, and the way we were doing it, it didn't have to be  
12 precise, but I stand by that statement. It can raise the  
13 level, sure.

14 Q. You filed an expert report in a VRA Section 2 case  
15 entitled Soto Palmer versus Hobbs, Correct?

16 A. Yes.

17 Q. And you testified in that case in March 2024; is that  
18 right?

19 A. Yes.

20 Q. Western District of Washington, correct?

21 A. Correct.

22 Q. And you presented an alternative remedial district to the  
23 Court in that case; is that correct?

24 A. That's right.

25 Q. And you testified to the Court in that case that your

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1 remedial district had a Hispanic Citizen Voting Age Population  
2 over 50 percent, correct?

3 A. Yeah, that's right.

4 Q. You told the Court that you were not producing any maps  
5 with a Hispanic Citizen Voting Age Population less than  
6 50 percent, right?

7 A. Yes.

8 Q. And you reported in your report in that case that your  
9 proposed district had a Hispanic CVAP of 51.1 percent using  
10 the 2021 data and 50.3 percent using the 2020 data, correct?

11 A. That's right.

12 Q. And those numbers were based on five-year ACS CVAP  
13 calculations that both included 2020 data, correct?

14 A. Sure. So in that case I came in at the remedial phase.  
15 I wasn't much -- I wasn't there for the trial, much less  
16 Gingles I. So that was a case where they were already using  
17 CVAP point estimates.

18 And frankly, I don't know if those districts where the  
19 error margins are calculated because the case that had been  
20 going on for a year hadn't been using them, and I felt it was  
21 a little bit late to raise a collateral attack on the data.

22 Q. You did not calculate error margins for the HCVAP numbers  
23 that you yourself presented in your expert report in that  
24 case, correct?

25 A. That's right.

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1 Q. And you didn't submit margins of error with your HCVAP  
2 numbers to the Court, correct?

3 A. That's right. They still existed, but they were -- I did  
4 not submit them because of how the case had been going on.

5 Q. And you represented to the Soto Palmer Court that your  
6 district had an HCVAP above 50 percent just based on the point  
7 estimate without calculating any margin of error; isn't that  
8 right?

9 A. That's right.

10 Q. You didn't advise the Court that CVAP data containing  
11 2020 numbers was in any way unreliable in that case, did you?

12 A. No.

13 Q. Your remedial district in Soto Palmer split block groups,  
14 correct?

15 A. I actually don't know; but I believe so, yes. As I think  
16 it through and think back about the district, yeah, it did.

17 Q. And you used a disaggregation process to disaggregate  
18 block group level CVAP data down to the block level that was  
19 similar to the process used by the Redistricting Data Hub,  
20 correct?

21 A. That's right.

22 Q. And in this case you discussed with Mr. Strach and you  
23 reported in your report that there are four issues with the  
24 process for disaggregating block group CVAP data down to the  
25 block level; is that correct?

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1 A. That's right.

2 Q. And you talked about those at length on your direct  
3 examination, correct?

4 A. That's right.

5 Q. And in your report in Soto Palmer when you were using  
6 CVAP data disaggregated to the block level, you did not  
7 identify any of those four issues to the Court; is that  
8 correct?

9 A. That's correct.

10 Q. You testified on Gingles I topics in around eight or nine  
11 other cases besides this one; is that fair to say?

12 A. I'll accept your count.

13 Q. Okay. And at your deposition, you couldn't remember ever  
14 calculating a margin of error associated with the district  
15 CVAP point estimate before the year 2024; is that right?

16 A. Yeah, that's right.

17 Q. Okay. Okay. You agree that in cases like this one that  
18 are not coalition cases, it's standard to use any part Black  
19 to calculate the Black Voting Age Population, correct?

20 A. Yes.

21 Q. All right. And for purposes of Black CVAP, the Census  
22 Bureau reports numbers that exclude categories including  
23 citizens who are part Black and part Hispanic; is that right?

24 A. That's right.

25 Q. So if there's anyone in a district who's a citizen who's

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1 part Black and part Hispanic who's surveyed by the ACS, then  
2 the ACS Black CVAP estimates will be lower than the actual  
3 number of citizens of Voting Age Population who are any part  
4 Black, correct?

5 A. I'm sorry. Can you repeat that?

6 Q. Sure. If there is anyone in a district who's a citizen  
7 who's part Black and part Hispanic who's surveyed by the ACS,  
8 then the ACS Black CVAP estimates will be lower than the  
9 actual number of citizens of Voting Age Population who are any  
10 part Black, correct?

11 A. I think that's right.

12 Q. You received your Ph.D. in September 2023, correct?

13 A. I thought it was December. I did my dissertation defense  
14 in September.

15 Q. December. Fair enough. Thank you.

16 A. Sorry. This transcript follows me around for the rest of  
17 my life so I have to be nit-picky.

18 Q. You never published any peer-reviewed academic work about  
19 the Voting Rights Act, correct?

20 A. That's right.

21 Q. You never published any peer-reviewed academic work about  
22 the use of Citizen Voting Age Population data, correct?

23 A. That's right.

24 Q. You wrote code in R to generate all of the results in  
25 your report and all of the maps in your report; is that right?

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1 A. Except for the portion where I did the Stephenson  
2 groupings because Mr. -- or Dr. Mattingly codes in python.  
3 But for the most part, it's done in R.

4 Q. And none of the code you used in this case was  
5 peer-reviewed, correct?

6 A. That's right.

7 Q. You have not done any analysis of whether District 5 in  
8 the enacted state Senate map is a performing crossover  
9 district; is that correct?

10 A. That's right.

11 Q. You agree that to assess whether a district is  
12 performing, you look to see how statewide candidates have run  
13 in the district in the past?

14 A. Yes.

15 Q. All right. Let's turn to your analysis of the  
16 Demonstration Districts.

17 You agree that the focus of the Gingles I inquiry is a  
18 Demonstrative District, right?

19 A. Yes.

20 Q. And you agree that Demonstration Districts A and C are  
21 majority-Black districts, correct?

22 A. Yes.

23 Q. You're not offering any opinion about whether any  
24 Demonstrative District drawn by Mr. Esselstyn complies with  
25 the legislature's redistricting criteria, correct?

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1 A. That's right.

2 Q. You're not offering any opinions about compactness in  
3 this case, correct?

4 A. That's correct.

5 Q. Okay. Let's turn to Demonstration District A. And you  
6 have a sentence on page 25 of your report --

7 MS. THEODORE: Pull that up, please, Troy.

8 BY MS. THEODORE:

9 Q. -- that starts, "If counties were to be split which I  
10 understand to violate the Stephenson role." Do you see that?

11 A. Yeah.

12 Q. And, in fact, you know that Stephenson does not minimize  
13 the splitting of counties, correct?

14 A. It doesn't minimize the splitting of counties, but I  
15 don't think you can introduce gratuitous splits into  
16 Stephenson group.

17 Q. Okay.

18 A. Minimal traversal rule, I think.

19 Q. The rest of that sentence states, "If counties were to be  
20 split, only three precincts at the eastern end of Washington  
21 County could be removed while maintaining a BVAP of 50 percent  
22 or two precincts at the western tip of Vance County could be  
23 removed." Correct?

24 A. That's right.

25 Q. And Mr. Esselstyn showed in his rebuttal report that



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1 precincts in this map could be -- in this district rather  
2 could be removed from Hertford or Bertie County without  
3 dropping the BVAP below 50 percent, correct?

4 A. Yeah, he did.

5 Q. All right. Let's turn to Demonstration District B. On  
6 page 34, you assert that the split of Pasquotank County and  
7 Demonstration District B appears to largely be made on a  
8 racial basis. Do you see that?

9 A. Yes.

10 Q. Are you aware that Demonstration District B's boundary  
11 largely tracks the boundary of Elizabeth City?

12 A. Yes.

13 Q. And you're aware that it tracks precincts?

14 A. Yes.

15 Q. You did not investigate whether there were alternative  
16 designs of Demonstration District B that would have placed a  
17 higher percentage of Pasquotank's Black population in the  
18 Demonstration District, did you?

19 A. No.

20 Q. Sitting here today, do you know whether putting all of  
21 Elizabeth City in Demonstration District B would have  
22 increased or decreased the Black CVAP percentage in  
23 Demonstration District B?

24 A. I don't know.

25 Q. All right. Let's go to Demonstration District C. You

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1 agree that 37 percent of the Black population of Vance County  
2 is outside of Demonstration District C, correct?

3 A. Yes.

4 Q. And you have no idea how much of Vance County's White  
5 population is in Demonstration District C, correct?

6 A. I thought at the deposition you suggested like 40 percent  
7 or somewhere in that range, but it would be in the transcript.

8 Q. Do you know that to be true?

9 A. I think that's right, somewhere in the range of  
10 40 percent.

11 Q. All right. In looking at your Figure 21 --

12 MS. THEODORE: Can we call that up on the screen,  
13 please, Troy. Sorry. Page 38.

14 BY MS. THEODORE:

15 Q. This is your map of the way in which District C splits  
16 Vance County, correct?

17 A. That's right.

18 Q. And there are multiple blocks with over 70 percent BVAP  
19 that are excluded from the Demonstration District even though  
20 they are in the northern part of Vance, correct?

21 A. That's right.

22 Q. And I actually had a question about the colors here in  
23 the key. I think you told Mr. Strach on direct that yellow is  
24 30 percent or lower, is that what you told him?

25 A. Yes.

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1 Q. Do you recall telling me at the deposition that yellow is  
2 35 percent BVAP or lower?

3 A. No.

4 Q. Okay.

5 MS. THEODORE: Can we call up Dr. Trende's  
6 deposition at page 149. Actually, let's put 148 next to 149.

7 BY MS. THEODORE:

8 Q. All right. Do you see there that I ask -- you see  
9 there --

10 MS. THEODORE: Keep that up please. 148 and 149.  
11 Thank you.

12 BY MS. THEODORE:

13 Q. Do you see there at the bottom of page 148 I ask you:  
14 Anything in the 30 to 35 percent range is going to show up as  
15 what color?

16 And you answer at the top of page 149: Yellow.

17 A. Yeah, I do.

18 Q. And then he said: So yellow color, then, is 0 to  
19 35 percent BVAP?

20 And you answered: Right.

21 A. Yeah.

22 Q. Do you know sitting here today which one of those answers  
23 is correct; the one you gave at your deposition or the one you  
24 gave to Mr. Strach earlier?

25 A. The code truncates it at 30 percent and there's a break

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1 inserted at 30, so I thought it was 0 to 30 percent as yellow.

2 But if that's what I said in my deposition, I guess that's

3 what I said in my deposition.

4 Q. And you don't know which one is right today?

5 A. I'll stick with the answer I gave in my deposition.

6 Q. So the answer you gave Mr. Strach earlier is incorrect?

7 A. I guess. I don't know where this answer from the  
8 deposition I gave came from to be perfectly honest, but I gave  
9 it in a deposition and so I guess I'm stuck with it.

10 Q. Okay. Whatever the number -- whatever the BVAP  
11 percentage that the color yellow represents, there's a large  
12 collection of yellow census blocks in -- let's put up Figure  
13 21 again.

14 There's a large collection of yellow census blocks in  
15 your map of Demonstration District C that is included in  
16 Demonstration District C; is that right?

17 A. That's right.

18 Q. And those are all census blocks that are majority White,  
19 correct?

20 A. Yes.

21 Q. You understand that Mr. Esselstyn testified that he  
22 considered alternative configurations of this map that would  
23 have increased the BVAP percentage, correct?

24 A. I heard him say that, yes.

25 Q. No reason to dispute that there would have been ways to

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1 increase the BVAP percentage while still maintaining  
2 population equality; is that right?

3 A. No, I didn't look at alternative configurations.

4 Q. Okay. And you referred I think to the -- what you called  
5 an odd looking arm in this map.

6 A. Yes.

7 Q. You understand that that incorporates 98 percent of the  
8 City of Henderson; is that right?

9 A. Yes.

10 Q. And that it follows precinct lines; is that right?

11 A. Correct.

12 Q. All right. I want to talk a little bit about your dot  
13 density maps. Let's pull up Figure 4 from Mr. Esselstyn's  
14 rebuttal report, which is on page 25. It's PX147. Actually,  
15 let's go to Figure 23 of your report. Sorry about that.

16 The point of these maps is to visually depict the number  
17 of Black people in an area and the number of White people in  
18 the area; is that right?

19 A. There's a couple different ways you can use or interpret  
20 them; but yeah, that's the basic underlying depiction,  
21 correct.

22 Q. And each blue dot here is, well, rounded depicting 10  
23 Black people; is that right?

24 A. That's right.

25 Q. And each orange X is rounded depicting 10 White people;

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1 is that right?

2 A. That's right.

3 Q. Okay. Don't you think if you want to visually depict the  
4 number of Black people in an area and the number of White  
5 people in the area using shapes, the shape should be the same  
6 size?

7 A. Like I said, in a literal sense they are the same size  
8 and the size parameter is set the same. My reasoning was that  
9 if I were to start changing the size parameter of the X that  
10 someone might come in -- I hadn't really contemplated counting  
11 pixels but if someone counted the pixels and saw it was a  
12 different number, then it would really look like I was messing  
13 around with things.

14 So at the end of the day when I do this, I'm interested  
15 in the spatial distribution of the minority population because  
16 that's what's relevant for Gingles 1 population is -- purposes  
17 is the compactness of the minority population.

18 Orange Xs are mostly there to give an overall sense of  
19 the distribution of the overall population so you can see  
20 where unpopulated parts of the map are. And I think you get  
21 that sense of the distribution of the Black population of the  
22 district just fine regardless of where the size of the Xs are  
23 set.

24 Q. Okay. Let's pull up Mr. Esselstyn's rebuttal report,  
25 page 25 of PX147.

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1 And you do understand that Mr. Esselstyn blew up the X's  
2 and the dots in your dot density plots?

3 A. Yes.

4 Q. And your testimony using your eyes is that the blue dot  
5 and the orange X there are the same size?

6 A. The size parameter is literally the same in the code.

7 Q. Are those the same size?

8 A. The X has more area than the blue dots, but the size  
9 parameter is set exactly the same in the code.

10 Q. You could have chosen to make the symbols the same size,  
11 right?

12 A. I doubt I could have done that. I could have made the X  
13 smaller, but I actually really doubt I could have made them  
14 the exact same size.

15 Q. You could have shrunk the Xs to be more similar in size  
16 to the blue dot, right?

17 A. I could have shrunk them, yeah.

18 Q. Okay. All right. Can we pull up Mr. Esselstyn's Figure  
19 5? This is the map where Mr. Esselstyn recreated your dot  
20 density plot using dots of the same size for Black and White  
21 people and made some other changes; is that right?

22 A. It's Black and non-Black, but yes.

23 Q. Right. Is your testimony that your map gives the same  
24 visual impression of the number of White people outside of the  
25 boundaries of Demonstration District C as Dr. -- as Mr.

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1 Esselstyn's map?

2 A. No, but I think that's less help -- I actually think if  
3 that's a change if I made it, it would be more helpful for  
4 defendants and less for plaintiffs because it makes that  
5 cluster of blue dots in Henderson look even more prominent.

6 I mean, when I was sitting back looking at the screen all  
7 I could see was a cluster of blue dots in Henderson that it  
8 looked like this arm was reaching in to scoop out. So maybe  
9 someone else looks at the map and sees something differently.

10 But I think this -- I think Mr. Esselstyn's depiction is  
11 a more favor -- favorable. Again, it's kind of a forest  
12 through the trees thing. I think Mr. Esselstyn's depiction is  
13 a more favorable depiction for defendants, but I don't have  
14 any -- again, these things are judgment calls. There's no --  
15 as far as I know, at least, there's no best practices handbook  
16 for how to do a dot density map, and I have no problem with  
17 someone who makes the judgment calls a little different coming  
18 in and presenting the data differently.

19 Q. In a census block with two orange Xs and one blue dot,  
20 your dot density plots are visually depicting twice as many  
21 White people as Black people, right?

22 A. Can you give me those numbers again? I'm sorry.

23 Q. In a census block with two orange Xs and one blue dot,  
24 your plot is visually depicting twice as many White people as  
25 Black people; is that right?



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1 A. That's right.

2 Q. But as a consequence of your rounding, in reality that  
3 census block with two orange Xs and one blue dot could have 15  
4 White people and 14 Black people; isn't that correct?

5 A. That's right. I think I -- on page -- pages 33 and 34 of  
6 my report I give a different take in Pasquotank County of what  
7 you get if you have one dot represent one resident and you  
8 just get such severe overplotting that you get like blobs of  
9 blue and orange. So your choice is to either stick with one  
10 dot for one person which produces giant blobs, that I honestly  
11 don't find helpful, or you take that rounding issue.

12 Q. And the plot on Figure 17, page 34, the problem with that  
13 plot is those blue dots in Elizabeth City are covering up the  
14 orange Xs; is that right?

15 A. That's one of them. And just as a general matter, you  
16 probably have blue dots and orange Xs elsewhere covering each  
17 other up because you're trying to cram so many Xs and dots  
18 into a single space. It just becomes harder to interpret it.

19 But, again, this is something if someone really believes  
20 it's an issue and you get a different interpretation by  
21 showing one dot or one X per one person, we can all produce  
22 that version of variant of all these maps if it really changes  
23 your interpretation. It's just a judgment call.

24 Q. Your testimony was excluded by the Court in the Fair  
25 Fight Action versus Raffensperger case; is that correct?

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1 A. Yeah. That was the case where the judge found I didn't  
2 have sufficient experience in the administration of elections,  
3 so...

4 Q. Okay. Many other -- is it fair to say that many other  
5 courts have declined to credit your testimony; is that right?

6 A. I think that's right. Sometimes you're the windshield  
7 and sometimes you're the bug.

8 Q. You testified, for example, in the Soto Palmer case that  
9 we discussed a little bit earlier; is that correct?

10 A. Yeah.

11 Q. And in that case the Court criticized a data  
12 visualization you provided as, quote, "misleading," correct?

13 A. That's right.

14 Q. You also testified in a Maryland partisan gerrymandering  
15 case that was ultimately decided by the Maryland high court in  
16 a case known as In the Matter of 2022 Legislative Districting  
17 of the State, correct?

18 A. That's right.

19 Q. And the Court concluded that the analysis that you  
20 provided in that case had, quote, the appearance of rigor, but  
21 also had, quote, a superficial quality to it that rendered it,  
22 quote, entitled to little weight, correct?

23 A. Yeah. There was a congressional case where I testified  
24 that they struck down the lines; but in this one I actually  
25 agree that it was a superficial analysis. All I was asked to

## S. Trende - Cross-Examination

1 do in that case was to calculate Reock and Polsby Popper  
2 scores and then put up maps of the districts. It's what I was  
3 asked to do. I think it even says in that that I didn't even  
4 have an opinion, which is -- I will agree.

5 Q. Okay. You also testified in the recent Louisiana  
6 redistricting case called Nairne versus Ardoin; is that right?

7 A. Yes.

8 Q. And you provided a Gingles I analysis in that case, is  
9 that right?

10 A. That's right.

11 Q. And the Court characterized your analysis as, quote,  
12 "oversimplistic, unhelpful, fundamentally flawed, and  
13 completely useless;" is that correct?

14 A. Yeah, yeah. The Court's analysis there was kind of  
15 equated -- my opinion was on population compactness. And the  
16 Court's analysis there equated district compactness with  
17 population compactness. And I agree, if you're going to use  
18 district compactness as a stand-in for the population, for the  
19 Black population something like the moment of inertia approach  
20 is useless.

21 MS. THEODORE: We're going to make a motion with  
22 respect to Dr. Trende, but I'm happy to do it after Mr.  
23 Strach's redirect, if there is any.

24 THE COURT: Mr. Strach.

25 MR. STRACH: Just a couple, Your Honor.

## REDIRECT EXAMINATION

BY MR. STRACH:

Q. Dr. Trende, counsel went through mistakes in your report at the beginning of the cross. Did any of the mistakes covered by counsel change any of your conclusions in this case?

A. No, they didn't. Even with all that taken into account, those districts -- even using Dr. Collingwood's smallest calculation of the error margin, the confidence interval still includes 50 percent, so you can't say with a reasonable degree of scientific certainty that it's over 50 percent with that knowledge.

MR. STRACH: All right. Thank you, Your Honor. That's all we have.

THE COURT: You wanted to move in some exhibits?

MR. STRACH: Oh, yes.

Your Honor, we'd like to move for the admission of LD60 and LD Exhibits 33 through 40. They'll be received.

(Legislative Defendants' Exhibits Nos. 60, 33 - 40 were admitted into evidence.)

THE COURT: Anything else from the Plaintiffs?

MS. THEODORE: Yes. Your Honor. We'd make a motion to strike Dr. Trende's testimony and his expert report.

He, by his own admission, made numerous significant errors in calculating margins of error for Black CVAP which

1 was his principal project in this case. He's candidly  
2 admitted many of the errors here, but he didn't catch any of  
3 them.

4 He testified that his errors here were material and  
5 stupid and they are certainly extreme errors. They had the  
6 effect of massively increasing the margin of error which  
7 advantaged his clients. He came in here to calculate margins  
8 of error and he got them all wrong.

9 We also heard that the one other time that Dr.  
10 Trende calculated margins of error for CVAP point estimates,  
11 he also got those numbers wrong. There's no evidence that  
12 Dr. -- excuse me. There is no evidence that Dr. Trende has  
13 ever correctly calculated a margin of error for CVAP data, and  
14 the numerous errors and all the actual numbers in his report  
15 generally undermine the reliability of all of his conclusions,  
16 including the broad statements he makes that are less easily  
17 verifiable.

18 And there's case law supporting this in the EEOC  
19 versus Freeman case. The Fourth Circuit held that the, quote,  
20 "Sheer number of mistakes and omissions in an expert's  
21 analysis renders it outside the range where experts might  
22 reasonably differ and unreliable." And that's 778 F.3d 463.  
23 And that is the case here.

24 You know, we're not disputing Dr. Trende's  
25 qualifications, but even a generally qualified person can't

1 come into the case and do calculations that they've always  
2 gotten wrong in the past and get them wrong again and submit  
3 their analysis and opinions to the Court as an expert.

4 And so we would -- we would move to strike Dr.  
5 Trende's report and testimony as unreliable at this time.

6 THE COURT: Mr. Strach.

7 MR. STRACH: Thank you, Your Honor.

8 To begin with, most, if not all, of this information  
9 was known through the depositions that took place in this  
10 case.

11 The motion in limine deadline was October 18th. No  
12 such motion was filed. That would have been the time to raise  
13 this well before trial.

14 Dr. Trende himself has testified, the Court has  
15 heard. To the extent there were mistakes, they didn't change  
16 his conclusions. A lot of them were simply frankly minor  
17 mistakes; some of them were methodological choices that the  
18 other side simply disagrees with, and -- but they didn't  
19 change his ultimate opinions in his report.

20 And obviously, this is a bench trial. To the extent  
21 the mistakes affect the credibility of the witness, the Court  
22 is obviously able and can judge that and weigh that as part of  
23 the overall testimony. So we would respectfully request the  
24 Court to deny this motion.

25 THE COURT: All right. I'll take it under

## A. Taylor - Direct Examination

1 advisement.

2 Dr. Trende may step down. Please watch your step as  
3 you come off the witness stand. There's a step down as you go  
4 through the gate.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: The Defense may call its next witness.

7 MS. RIGGINS: Good afternoon, Your Honor.

8 Legislative Defendants call Dr. Andrew Taylor to the stand.

9 THE COURT: Come up, Dr. Taylor. And please watch  
10 your step. There's a step down as you get close to the  
11 witness stand.

12 MS. RIGGINS: Your Honor, may my colleague approach  
13 the witness with a copy of his witness binder?

14 THE COURT: You may. Yes.

15 ANDREW TAYLOR,  
16 having been duly sworn, testified as follows:

17 THE COURT: Good afternoon. You'll have some  
18 questions from this table and then from this table.

19 You may examine the witness.

20 DIRECT EXAMINATION

21 BY MS. RIGGINS:

22 Q. Dr. Taylor, did you prepare an expert report in this  
23 matter?

24 A. I did.

25 Q. Do you have a binder in front of you, Dr. Taylor?

## A. Taylor - Direct Examination

1 A. I do.

2 Q. Behind Tab 1, is there a copy of your report in this case  
3 labeled as Legislative Defendants' Exhibit 62?

4 A. There is.

5 Q. Is your CV attached as Appendix A to Legislative  
6 Defendants' Exhibit 62?

7 A. It is.

8 Q. Thank you. Could you please tell us a little bit about  
9 your educational background, Dr. Taylor?

10 A. Yes. I have a BA in American studies from the University  
11 of Kent in Canterbury in the United Kingdom, an M.A. in  
12 Government from Lehigh University and a Ph.D. in political  
13 science from the University of Connecticut.

14 Q. Are you currently employed, Dr. Taylor?

15 A. I am.

16 Q. Where are you currently employed?

17 A. At North Carolina State University.

18 Q. How long have you been employed with NC State?

19 A. This is my 30th year.

20 Q. Are you tenured Dr. Taylor?

21 A. I am.

22 Q. Have you ever served as a department chair at NC State?

23 A. I have.

24 Q. In what capacity?

25 A. In political science between 2006 and 2010.



## A. Taylor - Direct Examination

1 Q. Have you ever served in a leadership role in any  
2 professional political science associations?

3 A. Yes. I was president of the North Carolina Political  
4 Science Association from 2012 to 2013.

5 Q. Could you please explain to the Court what the North  
6 Carolina Political Science Association is?

7 A. Yes. It is a group of professional political scientists,  
8 largely academic, some practitioners with Ph.D.s who live in  
9 or are affiliated with institutions within North Carolina.

10 Q. And would that include institutions within the UNC  
11 system?

12 A. Yes, of course.

13 Q. What about outside the UNC system?

14 A. Yes, and private institutions as well.

15 Q. What classes have you taught at NC State, Dr. Taylor?

16 A. Well, very many over the course of 30 years, as you might  
17 imagine. My bread-and-butter courses are generally in the  
18 area of American politics, Intro to American Government,  
19 Presence in Congress, Parties Interest Groups, seminars on  
20 matters -- various topics. I do -- I'm teaching this  
21 semester, for example, a seminar called Political Choice --  
22 Public Choice in Political Institutions. So a number of  
23 different courses. Legislative Process course, quite a few.

24 Q. Do any of the classes that you teach cover the Voting  
25 Rights Act?

## A. Taylor - Direct Examination

1 A. Well, in the Intro to American Government course we deal  
2 with the 1965 original legislation and then in 301 Presence in  
3 Congress and my Public Choice in Political Institutions course  
4 we look at the 1982 amendments and redistricting issues,  
5 majority-minority districts, et cetera.

6 Q. Do any of the classes you teach address North Carolina  
7 politics in voting?

8 A. Yes. Particularly the Legislative Process course which I  
9 taught for about 12 years for -- we used to have the North  
10 Carolina General Assembly internship program hosted at NC  
11 State and we don't anymore; but for a long time I taught that  
12 Legislative Process class and that was a course largely about  
13 the North Carolina General Assembly, but also about other  
14 state legislatures and the American legislative process  
15 generally.

16 Q. Do any of the classes that you teach cover comparative  
17 state and national laws?

18 A. Yes. I mean, I just talked about the legislative process  
19 class, obviously Presence in Congress class, the Intro to  
20 American Government class.

21 Q. All right. Dr. Taylor, have you authored any books?

22 A. I have.

23 Q. Are all of those listed in your CV?

24 A. Yes.

25 Q. Have you written any chapters and edited books?

## A. Taylor - Direct Examination

1 A. Yes.

2 Q. Are those also listed in your CV?

3 A. Yes.

4 Q. Do you have an understanding of what the term  
5 peer-reviewed means?

6 A. Yes, I do. It is when a panel or group of other  
7 academics, practitioners, qualified people with advanced  
8 educational credentials evaluate on behalf of presses and  
9 journals submitted work for the purposes of making sure that  
10 it meets promulgated standards that the press or the journal  
11 have for their -- for the stuff they are going to publish.

12 Q. Have you ever published any peer-reviewed publications?

13 A. I have.

14 Q. Are all of those listed in your CV?

15 A. They are.

16 Q. Have you ever been a peer reviewer?

17 A. Yes, on many occasions.

18 Q. Have you published academic work on North Carolina  
19 politics voting in elections?

20 A. Yes. The principal example of that would be the  
21 University of North Carolina Press Book, The End of Consensus  
22 that I write with a colleague Toby Parcell which is  
23 essentially about K-12 education politics and policy largely  
24 in Wake County but in North Carolina generally. There's some  
25 work on state legislatures of which, of course, North Carolina

## A. Taylor - Direct Examination

1 has one that's more -- most prominently demonstrated by a 2006  
2 Legislative Studies Quarterly article. And then a chapter in  
3 my University of Michigan Press Book. There's some work on  
4 governors again of which of course North Carolina is an  
5 example of that that's published as well.

6 Q. Have you published academic work on comparative state,  
7 national laws, politics, and policies?

8 A. Yes. You're saying North Carolina specifically? With  
9 regards to publish on -- yeah, I mentioned the 2006  
10 Legislative Quarterly article that becomes all that or that  
11 develops into the chapter in the University of Michigan Press  
12 Book, the stuff on governors. There's a significant amount of  
13 stuff on other matters that are related to that as well.

14 Q. Have you been qualified as a testifying expert in other  
15 cases, Dr. Taylor?

16 A. Yes, one.

17 Q. What case have you testified at trial at?

18 A. That was the Harper case.

19 Q. And what did the Harper case involve?

20 A. Partisan redistricting.

21 Q. All right. Did the Harper Court exclude your testimony?

22 A. No, no. And this was State Court.

23 Q. Thank you.

24 MS. RIGGINS: Your Honor, at this point pursuant to  
25 Federal Rule of Evidence 702, Legislative Defendants would

## A. Taylor - Direct Examination

1 offer Dr. Taylor as an expert in political science with an  
2 emphasis on North Carolina politics voting in elections, North  
3 Carolina political history, and comparative state and national  
4 laws, politics, and policies.

5 THE COURT: Okay. You may proceed.

6 BY MS. RIGGINS:

7 Q. Dr. Taylor, what topics generally does your expert report  
8 in this case cover?

9 A. Well, I was charged to respond to Dr. Burch's initial  
10 report as it pertains specifically to the Senate Factors 3, 5,  
11 7, and 8.

12 Q. All right. Can you briefly explain to the Court how you  
13 conducted your analysis?

14 A. Yeah. Well, I think it's fair to say it was quite  
15 different from Dr. Burch's which is essentially a descriptive  
16 approach.

17 I was interested in why we are -- care -- why we're  
18 focused on this particular case, observation, or piece of  
19 data; by which I mean really North Carolina today or in recent  
20 years, the 11 counties of northeastern North Carolina that are  
21 subject of interest here today or in recent years. And I know  
22 jurists say it's because the plaintiffs have brought suit, but  
23 as a social scientist, I'm interested in thinking about why  
24 these things -- why these cases, why these pieces of data are  
25 different, special, important. This is the so-called so what

## A. Taylor - Direct Examination

1 question that social scientists ask themselves. And to do  
2 that I thought the best way was to engage in a comparative  
3 analysis; that is, to compare them with peer-adjacent  
4 comparable pieces of data.

5 So what this means for North Carolina in a  
6 cross-sectional analysis would be North Carolina versus -- I  
7 think the best way to do it, North Carolina versus the other  
8 49 states, or North Carolina versus the country as a whole.

9 And then with regards to those 11 counties, the 11  
10 counties versus the remaining 89 counties in North Carolina or  
11 the state as a whole. And then you can do a temporal  
12 analysis, which would be comparative in nature, which is to  
13 measure the data with itself in the past and/or in the future.

14 And I also think we're directed to do that as a social  
15 scientist by the wording of Factors 3, 5, 7, and 8. So in 3,  
16 5, and 7 we're asked to determine the extent to which  
17 something. And in Factor 8 we're asked to determine whether  
18 there is a lack of sufficient something. And there's no sort  
19 of like, you know, this is the target number of legislators,  
20 or this is the target employment rate, or this is the target  
21 voting practice, we have to then generate somehow through the  
22 data reasonable measure, and I think you do that through an  
23 explicitly comparative method, which I just described to you  
24 is my approach.

25 THE COURT: It's time for our 15-minute break.

## A. Taylor - Direct Examination

1 (The proceedings were recessed at 3:30 p.m. and reconvened  
2 at 3:45 p.m.)

3 THE COURT: You may continue the examination.

4 MS. RIGGINS: Thank you, Your Honor.

5 BY MS. RIGGINS:

6 Q. Dr. Taylor, what is your understanding of Dr. Burch's  
7 definition of the Black Belt?

8 A. She uses 11 counties in the northeastern part of North  
9 Carolina. The Black Belt in political science and political  
10 history has a variety of different meanings. It's a pretty  
11 amorphous and elastic concept. It is a national concept that  
12 describes parts of -- a lot of the southeastern part of the  
13 United States.

14 In North Carolina it could be expanded as to say to  
15 include counties that would be, if you want to use counties as  
16 the unit, it would be sort of in the I-95 corridor down to the  
17 South Carolina border down to places like Scotland County.

18 What the Black Belt means, it sort of has two kinds of  
19 meanings in political science. The first is an explicitly  
20 historical one, and this is areas which had large share of  
21 plantations in the pre-Civil War period with significant  
22 number of enslaved persons. And then today it really -- it  
23 means the areas that have a relatively large, there's no real  
24 standard, but a relatively large proportion of Black  
25 residents.

## A. Taylor - Direct Examination

1 Q. For purposes of this case, Dr. Taylor, do you dispute Dr.  
2 Burch's definition?

3 A. I mean, no, there's no -- you know, we could, but I'm  
4 fine with it.

5 Q. So Dr. Taylor, I would like to look at page 7 of your  
6 expert report. It will appear on the screen, but please feel  
7 free to use the binder in front of you.

8 A. Yes.

9 Q. On page 7 there's a section of your report called,  
10 "Analysis of areas related to Senate factor where group  
11 members bear the effects of discrimination."

12 What Senator factor does this section cover?

13 A. Five.

14 Q. What is your understanding of Senate Factor 5?

15 A. The extent to which members of the grouping question bear  
16 the burdens of discrimination in areas like employment,  
17 education, healthcare.

18 Q. Let's start with education. What do you analyze in this  
19 subsection of your report?

20 A. In the first part I look at segregation of schools. Now,  
21 there's a variety of different ways that you can measure this.  
22 I took data which originally comes from the National Center  
23 for Education Statistics. It's been gathered together by  
24 professors at the University of Southern California and  
25 Stanford in the education -- Educational Opportunity Project



## A. Taylor - Direct Examination

1 and they've been gracious enough to researchers to put it  
2 online. Funnily enough when I actually wrote the report way  
3 back in last summer, it was only really available in  
4 spreadsheets but now they have these wonderful maps that they  
5 show the data in that kind of graphical form. And, in fact,  
6 during the deposition Mr. Jones put one of those maps up.

7 And they use sort of two measures of segregation. One is  
8 to -- is a sort of a score that conveys the nature of  
9 segregation within the jurisdiction. This is a sort of  
10 dissimilarity index, and I can explain that if wanted.

11 But the type of measure that I report here is related to  
12 what we might call exposure scores. And this is where you  
13 get, convey the information based upon the performance, I  
14 guess you could say, of a particular group either on its  
15 own -- so you'd say schools in this particular district are on  
16 average 51 percent White, or the average White kid in schools  
17 in this jurisdiction goes to schools that are 39 percent  
18 White, or in reference to another group. So you'd say  
19 something like scores in this district are 51 percent White  
20 and 39 percent Black, or the average White kid in this  
21 district goes to school that has on average 39 percent Black  
22 kids or vice versa. Yes, so that's the approach that I took.  
23 And then comparing North Carolina to the rest of the country.

24 Q. All right. Thank you Dr. Taylor.

25 You reference the website that your data -- that you used

## A. Taylor - Direct Examination

1 for your data. Can the link to that website be found at  
2 footnote 8 of your report?

3 A. Yes.

4 Q. What time period does the segregation index data cover?

5 A. From the early 1990s to about today.

6 Q. What did your analysis using this data of North Carolina  
7 show?

8 A. So if we use an exposure-like score and we take the two  
9 groups as White and non-White, and the reason I'm doing that  
10 is because roughly 50 percent of the student population is  
11 White in North Carolina and roughly 50 percent non-White and  
12 that is also the same nationally. So you can have a kind of  
13 direct comparison. And whichever way you run the comparison,  
14 it's roughly that North Carolina gets a score in the low to  
15 mid-thirties and the nation gets a score in the mid to high  
16 twenties. So that would mean something like the average White  
17 kid in North Carolina goes to a school which has roughly 30 to  
18 35 percent non-White kids and the average White kid nationally  
19 goes to a school that has roughly 25 to 30 percent non-White  
20 kids.

21 Q. Does that mean that North Carolina schools are roughly  
22 less segregated than that of the nation?

23 A. Yes, it's pretty close. But, if anything, they are less  
24 so, yes.

25 Q. All right. Dr. Taylor, what's a perfect exposure score?

## A. Taylor - Direct Examination

1 A. Well, the trouble is it depends upon the ethnic and  
2 racial composition of the jurisdiction that you're looking at  
3 and what kind of score you're looking at. But you want them  
4 to be roughly proportionate. The proportion -- on average the  
5 proportion of students in the school from that group to be  
6 roughly proportionate to the total overall.

7 Q. Based on your experience, is it practical for  
8 jurisdictions to have a perfect exposure score?

9 A. If that's the definition of perfect, then as a practical  
10 matter, an empirical matter, no, the residential patterns  
11 particularly prevent that from happening.

12 Q. Did you also analyze segregation scores in Dr. Burch's 11  
13 counties?

14 A. I did.

15 Q. Okay. And is that analysis found on page 9 of your  
16 report and 10?

17 A. Yes.

18 Q. All right.

19 A. Yes.

20 Q. Can you briefly explain that to the Court?

21 A. Well, the trouble with doing the 11 counties is that to  
22 get an average -- all of the counties have different size  
23 populations. So, you know, the -- an average is where you  
24 weigh -- overweight it, by definition, the smaller of the  
25 counties.

## A. Taylor - Direct Examination

1 And then the other problem is each of the counties,  
2 because the data is reported at the county level here, each of  
3 the counties has a different ethnic and racial makeup of its  
4 student body.

5 But roughly speaking, again, with that in mind, roughly  
6 speaking, the scores in the 11 counties are about -- the  
7 makeup is proportionate to the overall population averaged  
8 across the 11 counties.

9 Q. Thank you, Dr. Taylor.

10 And for your analysis of the 11 counties, did you compare  
11 White versus Black or did you compare White versus non-White?

12 A. I did White versus Black because that is -- you know, in  
13 North Carolina that's the largest minority group and  
14 particularly obviously in that part of the state.

15 Q. All right. And did you also report the segregation  
16 scores for the 11 counties dating back to the early 1990s?

17 A. Yes. I believe I did, yes.

18 Q. Did you also study racial gaps in student test scores?

19 A. Yeah. I present data from the National Assessment of  
20 Educational Progress, the Nation's Report Card. People in the  
21 room might have heard of this recently because they just  
22 published 2024 figures last week. And so what they do is they  
23 publish scores with regards to proficiency of students in  
24 grades four and eight in math and reading.

25 Q. All right. For what year did you look at data,

## A. Taylor - Direct Examination

1 Dr. Taylor?

2 A. 2022.

3 Q. And what did your analysis of fourth and eighth graders  
4 show?

5 A. That the racial gaps in North Carolina are less than they  
6 are in the country as a whole. In fact, actually, for the  
7 time -- since around 2000 up until about 2022, the gaps are  
8 narrower in the nation than they are -- excuse me -- in North  
9 Carolina than they are in the nation as a whole, and those  
10 actual figures are reported in footnote 15.

11 Q. All right. Do you clear, Dr. Taylor, do you contest that  
12 there's a racial gap between Black and White student test  
13 scores in fourth and eighth grade in North Carolina?

14 A. No.

15 Q. Simply because there's a gap in the absolute sense, is  
16 that the end of your inquiry in your professional opinion?

17 A. No, because as I said, I'm using this comparative  
18 approach.

19 Q. All right. I would like to look at Figure 3 in  
20 Plaintiffs' Exhibit 21, if we could. And that's in Tab 2 of  
21 your binder, Dr. Taylor.

22 A. Yeah.

23 Q. Figure 3 can be found on page 11.

24 A. Yes.

25 Q. What year does Dr. Burch use to calculate her average

## A. Taylor - Direct Examination

1 math scores for the 11 counties?

2 A. 2018.

3 Q. And your data was from 2022; is that right, Dr. Taylor?

4 A. Yes.

5 Q. Okay. Were you in the courtroom yesterday for Dr.  
6 Burch's testimony?

7 A. I was.

8 Q. Did you hear Dr. Burch talk about the COVID-19 pandemic  
9 and its potential impact on scores?

10 A. Yes.

11 Q. Would Dr. Burch's data here have accounted for any sort  
12 of COVID-19 pandemic indication?

13 A. No, it couldn't, because it was in 2018, the  
14 observations.

15 Q. Does yours?

16 A. Well, presumably, yes.

17 Q. All right. Turning back to your report, did you also  
18 look at test scores in Dr. Burch's 11 counties?

19 A. Yes. This is on page 11? Yes, I did.

20 Q. Can you explain to the Court what sort of analysis you  
21 did with regard to the 11 counties here?

22 A. Well, so to get a comparison to be able to understand the  
23 gap not in the absolute sense but in a comparative sense, I  
24 thought a fair way to do it would be to look at the 11 largest  
25 counties in the state. Those are counties where you have a

## A. Taylor - Direct Examination

1 proportion of the population that is Black that is similar to  
2 maybe at least approaching the proportion in these 11  
3 counties, so they would become a viable comparison. And I  
4 found that the gaps in the 11 counties of the northeastern  
5 part of the state were narrower than they were in the 11  
6 largest counties on math and reading.

7 Well, actually, they do as well, excuse me.  
8 Interestingly, the Black students do as well. They are  
9 narrower on math, but they are a little bit wider on reading.

10 Q. And you said wider with a D, Dr. Taylor?

11 A. Yes. Wider, yes.

12 Q. Did you also analyze high school graduation rates?

13 A. Yes. So the National Center for Education Statistics  
14 which also generates the data that we used in the SEG index, a  
15 huge reputable data bank of education statistics, publishes  
16 what is called the Adjusted Cohort Graduation Rate for  
17 jurisdictions and so I looked at that.

18 Q. Does the NCES get its graduation data from the states  
19 themselves?

20 A. Yes.

21 Q. What did your statewide analysis of high school  
22 graduation rates in North Carolina show?

23 A. That the '21-'22, the gap -- the Black-White gap in the  
24 country was wider than it was in North Carolina. So it's  
25 seven percentage points in North Carolina and it's nine

## A. Taylor - Direct Examination

1 percentage points nationally. And those -- that difference  
2 actually is attributable to the higher Black graduation rate  
3 in North Carolina compared to the country. The White rates  
4 are identical.

5 Q. All right. Dr. Taylor, I'd, again, like to look at  
6 Plaintiffs' Exhibit 21 in your binder -- Tab 2 in your binder,  
7 Plaintiffs' Exhibit 21. I'd like to look at page 12.

8 Do you see that on your screen, Dr. Taylor?

9 A. Yes. On my screen as well, yeah.

10 Q. All right. What does Figure 4 on Dr. Burch's report  
11 show?

12 A. It shows the percent of White and Black residents who are  
13 25 years and older who do not have a high school diploma in  
14 the 11 counties in the northeastern part of the state.

15 Q. How does your analysis of high school graduation rates  
16 compare to what Dr. Burch analyzed here?

17 A. Well, mine would be a more direct observation of the  
18 nature of education because it's getting actual graduation  
19 rates.

20 Here, you would have people who are over age 18 -- excuse  
21 me -- over the age of 25, excuse me, who moved into the area,  
22 who had a high school diploma or didn't have a high school  
23 diploma, and from what we know from the census data presumably  
24 a large number of people who moved out of the area who may not  
25 have had a high school diploma or may well have had a high



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1 school diploma. So this just takes the reading of residents  
2 currently rather than sort of direct observation of the nature  
3 of education in the 11 counties.

4 Q. Thank you, Dr. Taylor. We can take this figure down.

5 MS. RIGGINS: Thank you, Mr. Williamson.

6 BY MS. RIGGINS:

7 Q. Turning back to page 12 of your report, Legislative  
8 Defendants' Exhibit 62. Did you also discuss higher  
9 education, Dr. Taylor?

10 A. I did.

11 Q. Did that analysis include an analysis of Black North  
12 Carolinians with college degrees?

13 A. It did.

14 Q. What did your analysis of Black North Carolinians with  
15 college degrees show?

16 A. Well, as recently as 2009, the proportion of Black North  
17 Carolinians with college degrees was lower than the proportion  
18 of Black Americans with college degrees -- excuse me, by .4  
19 percentage points.

20 By 2022, the proportion of Black North Carolinians with  
21 college degrees was actually higher than the proportion of  
22 Black Americans with college degrees by .6 percentage points,  
23 26.9 to 26.3.

24 Q. Dr. Taylor, do you know what North Carolina Promise is?

25 A. Yes. It was enacted in the 2016 budget, took effect in

## A. Taylor - Direct Examination

1 2018, and for four universities within the UNC system it has  
2 them offer tuition to students at \$500 a semester.

3 Q. Are any of the four UNC Promise schools where a tuition  
4 was lowered historically Black colleges or universities?

5 A. Yes, two of them.

6 Q. Why did you include NC Promise in your report Dr. Taylor?

7 A. Well, I thought that it was a way in which the UNC system  
8 increases access to all types of North Carolina young people.

9 Q. And so Dr. Taylor, we've heard a lot already about your  
10 discussion of enrollment at UNC system schools which can be  
11 found on page 12 of your report. Can you please explain what  
12 you examined in terms of enrollment at UNC system colleges?

13 A. Yeah. I just looked at the enrollment of the Black  
14 student enrollment levels in UNC system schools between fall  
15 of 2014 and fall of 2023 and there is an increase. And now  
16 the proportion of enrolled student, or at least as of the fall  
17 of 2023, was 21.2 percent which is roughly the same as the  
18 state as a whole.

19 Q. Why did you look at the enrollment at the UNC system  
20 level as a whole?

21 A. Because they are -- the UNC system is considered a  
22 premier statewide university system and access to it and  
23 enrollment at its schools is considered very valuable to the  
24 residents of North Carolina.

25 Q. Are you aware Dr. Taylor that Dr. Burch criticized your

## A. Taylor - Direct Examination

1 choice to look at the UNC system as a whole in her rebuttal  
2 report and on the stand yesterday?

3 A. Yes.

4 Q. What do you make of Dr. Burch's criticism that enrollment  
5 at UNC Chapel Hill or what she alleges to be the state's only  
6 flagship institution is especially important?

7 A. Well, this is not just as an NC State professor I'm  
8 saying this. It does seem rather arbitrary and dismissive of  
9 the other institutions in the system.

10 Q. All right. Is there actually more than one flagship  
11 university in the UNC system?

12 A. Well, of course, a lot of people would say that NC State  
13 is as well. But as I mentioned, all of the constituent  
14 institutions and the system as a whole is considered an  
15 extremely high level, high value system -- university public  
16 system in the country.

17 Q. Do some schools in the UNC system offer degree programs  
18 that UNC Chapel Hill does not?

19 A. Yes.

20 Q. Was this a consideration when you decided to look at the  
21 NC system enrollment rates as a whole?

22 A. Yes, because to some extent there is this sort of  
23 division of labor and students do go to and flock to  
24 institutions which are -- have strengths in their interests,  
25 and those will be different institutions.

## A. Taylor - Direct Examination

1 Q. Do you know if UNC Chapel Hill has degrees in animal or  
2 veterinary science, Dr. Taylor?

3 MR. JONES: I'll object. I don't think there's  
4 anything about this in the report.

5 MS. RIGGINS: So, Mr. Jones, I appreciate your  
6 objection, but I will say Dr. Taylor is explaining why he  
7 chose to use the UNC enrollment data as a whole. Dr. Burch  
8 criticized him in her rebuttal report. We heard quite a bit  
9 of testimony about this on the stand yesterday, and Dr. Taylor  
10 was not offered for the scheduling order an opportunity to  
11 respond to Dr. Burch in writing. So I think that this is  
12 rooted in his choice of data which has been criticized.

13 THE COURT: You can answer, if you know.

14 THE WITNESS: I'm sorry. Can you repeat the  
15 question?

16 BY MS. RIGGINS:

17 Q. Do you know if the UNC system offers -- I'm sorry. Do  
18 you know if UNC Chapel Hill offers degrees in animal or  
19 veterinary sciences?

20 A. I do know, and they don't.

21 Q. Are there historically Black colleges and universities  
22 that offer degrees that UNC Chapel Hill does not?

23 A. Yes. So NC A&T would be an obvious example.

24 Q. And so, Dr. Taylor, I believe you said earlier you were  
25 in the courtroom yesterday for Dr. Burch's testimony; is that

## A. Taylor - Direct Examination

1 right?

2 A. Yes.

3 Q. What do you make of Dr. Burch's contention that a student  
4 might choose to attend UNC Chapel Hill because it has  
5 nationally ranked professors with national reputations and she  
6 does not know if that's the case at other UNC system schools?

7 MR. JONES: Objection. There is also nothing about  
8 any of this in the report. This is the first time that I'm  
9 hearing that Dr. Taylor has any opinions about this matter.

10 MS. RIGGINS: Again, Your Honor, this goes to him  
11 and his choice to study the UNC system as a whole. Dr. Burch  
12 testified about this --

13 THE COURT: I'll allow it. Each of you are on a  
14 clock, I'll just say.

15 THE WITNESS: Would you repeat the question, please.

16 BY MS. RIGGINS:

17 Q. What do you make of Dr. Burch's contention that a student  
18 might choose to attend UNC Chapel Hill because it has  
19 nationally ranked professors and national reputations and she  
20 does not know if that's the case at other UNC system schools?

21 A. I would say people would choose to go to UNC or at least  
22 apply to UNC Chapel Hill for that reason, but they do to many,  
23 if not all of the other UNC constituents campuses as well.

24 Q. Dr. Taylor, I'd like to move on and talk about the  
25 socioeconomic factors that you examine in your report. Can

## A. Taylor - Direct Examination

1 you tell the Court a little bit about your analysis of the  
2 unemployment rate for Black North Carolinians?

3 A. Yes. Taking data from the EPI, that's the Economic  
4 Policy Institute, I show that in 2010 immediately after the  
5 Great Recession, the unemployment rate for Black North  
6 Carolinians was 17.2 percent, which was 1.3 percentage points  
7 higher than the national figure for Black Americans and by the  
8 beginning of 2023, North Carolina's Black unemployment rate  
9 was actually 5.4 percent, which was then lower than the  
10 national Black average of 5.8 percent.

11 Q. Did you also examine unemployment rates in the 11  
12 counties?

13 A. Yes. And to be fair here, the Black unemployment rate in  
14 the 11 counties in January 2023 was actually a little bit  
15 higher than the Black unemployment rate in North Carolina of  
16 5.6 percent, but it was lower than the national average.

17 Q. Did you examine poverty rates, Dr. Taylor?

18 A. Yes, I did.

19 Q. Why did you decide to look at poverty rates?

20 A. Well, A lot of this is because I'm responding directly to  
21 Dr. Burch's report but just offering a different methodology.

22 Q. All right. What observations did you make about the  
23 Black poverty rate in your report, Dr. Taylor?

24 A. The percentage of Black people in poverty came down by  
25 nearly four percentage points. This is for the 11 counties

## A. Taylor - Direct Examination

1 between 2010 and 2022, that's 29.6 percent to 25.7 percent,  
2 which was greater than the reduction in the Black poverty rate  
3 for the state as a whole.

4 Q. I'd like to turn our attention to subsection C which is  
5 health on page 13 of your report. Can you please explain  
6 briefly for the Court, Dr. Taylor, what you looked at in this  
7 subsection?

8 A. Yes. I looked at racial disparity and life expectancy  
9 rates which is data from the CDC and Division of Public Health  
10 NCDHHS.

11 Q. And what did your analysis reveal?

12 A. That with regards to the nation, in 1990 the life  
13 expectancy at birth rate -- difference in the Black and White  
14 rate was 6.3 years; and in 2020, it had come down to 5.9  
15 years. But in North Carolina it was also 6.3 years in 1990;  
16 but by 2020, it had come down, the racial disparity or life  
17 expectancy gap had come down to 4.5 years.

18 Q. Did you also look at life expectancy rates in the 11  
19 counties Dr. Burch identified?

20 A. Yes. It's not as long a time series for that, but NCDHHS  
21 provides life expectancy figures for the same period the  
22 second observation was, which was around 2020. And the  
23 statewide, as I just reported, the statewide gap in life  
24 expectancy was 4.5 years between Blacks and Whites, but in the  
25 11 counties it was actually 3.2 years.

## A. Taylor - Direct Examination

1 Q. All right. Turning to subsection D on page 15 of your  
2 report, Dr. Taylor, what did you look at here?

3 A. We're looking at criminal justice now.

4 Q. Yes. Did you look at incarceration rates, Dr. Taylor?

5 A. I did.

6 Q. Did you compare incarceration rates to -- in North  
7 Carolina to the nation as a whole?

8 A. I did. So what you do is you control for population  
9 differences when you're looking at different incarceration  
10 rates for different groups. And so the -- per 100,000 of the  
11 population, the -- nationally the Black incarceration rate is  
12 six times greater than the White incarceration rate; and in  
13 North Carolina the Black incarceration rate is 3.7 times  
14 greater than the White incarceration rate.

15 Q. Does Dr. Burch also compare North Carolina incarceration  
16 rates to other jurisdictions in her rebuttal report?

17 A. Yes, I think so. Do we have a page?

18 Q. Sure. If you turn to Tab 3 in your binder, Dr. Taylor,  
19 you will see Plaintiffs' Exhibit 117 which is a copy of Dr.  
20 Burch's rebuttal report.

21 A. Yeah.

22 Q. If we look at page 7, do you see in the last paragraph on  
23 page 7, Dr. Burch's criticisms of your incarceration analysis?

24 A. Yes.

25 Q. What do you think about Dr. Burch's criticisms here?



## A. Taylor - Direct Examination

1 A. I think it's good that she started to do some kind of  
2 comparative analysis, but she uses just the sick -- well, how  
3 many states is it, 2, 3, 4, 5, 6, 7, 8, 9, 10 -- maybe that's  
4 the 11 states of the old confederacy, but she uses those  
5 states she says if you compare to those, North Carolina is,  
6 what, four from bottom.

7 As I said, my method all the way along has been to  
8 compare North Carolina with the rest of the country.

9 Q. Do you think it's appropriate to compare North Carolina  
10 to other states in isolation?

11 A. Not as appropriate as it would be to compare it against a  
12 standard that I've been using throughout consistently which is  
13 the rest of the country or the other 49 states.

14 Q. Thank you, Dr. Taylor.

15 Turning back to Section 4 of your report, which can be  
16 found on page 16. What Senate factor did you examine here?

17 A. This is number seven.

18 Q. What is your understanding of Senate Factor 7?

19 A. It's the extent to which members of the group in question  
20 hold elected office.

21 Q. What are some of the public elected offices that you  
22 looked at in this section of your report?

23 A. Mainly U.S. House and State Legislature.

24 Q. On page 16 of your report, do you list several members of  
25 North Carolina's congressional delegation who are African

## A. Taylor - Direct Examination

1 American?

2 A. I do.

3 Q. Can you identify for the Court which one -- which former  
4 representatives and current representatives have been elected  
5 to North Carolina's Congressional District 1?

6 A. Yeah. Representatives Ballance, Butterfield, Clayton,  
7 and Davis.

8 Q. All right. Does Congressional District 1 cover Dr.  
9 Burch's 11 counties?

10 A. Yes.

11 Q. Do you know who currently represents Congressional  
12 District 1?

13 A. Yes. It's Representative Don Davis.

14 Q. On page 17 of your report, do you report the number of  
15 Black legislators within the North Carolina General Assembly  
16 at the time you authored this report?

17 A. Yes, which is before the 2024 election. Yes, I do.

18 Q. And what was that number at the time you authored this  
19 report?

20 A. Thirty-five.

21 Q. Do you have an understanding of whether Black  
22 representation has increased as a result of the 2024 election?

23 A. Yes, it has, I believe, by three members.

24 Q. All right. I would like to turn to Section 5 of your  
25 report on page 18.

## A. Taylor - Direct Examination

1 A. Yes.

2 Q. What Senate factor did you analyze here, Dr. Taylor?

3 A. Number 3.

4 Q. What's your understanding of Senate Factor 3?

5 A. The extent to which voting practices or procedures might  
6 result in discrimination against minority group.

7 Q. All right. In your opinion, Dr. Taylor, does the General  
8 Assembly have unusually large election districts?

9 A. No.

10 Q. Does Senate Factor 3 reference something called an  
11 anti-single-shot provision?

12 A. Yes. So it provides some illustrations of those kinds of  
13 voting practices or procedures that might result in this  
14 discrimination and that's one of them.

15 Q. Can you explain what an anti-single-shot provision is?

16 A. Well, in cumulative voting where a voter is able to vote  
17 for more than one candidate, the -- a single-shot is using  
18 both votes to vote for one candidate and an anti-single-shot  
19 provision would force them from -- to either split their votes  
20 or abstain from the use of one of them.

21 Q. Do North Carolina State legislative elections have  
22 cumulative voting?

23 A. No. very few elections in North Carolina do now.

24 Q. All right. Dr. Taylor, were you here for Dr. Burch's  
25 testimony yesterday where she talked about the cost of voting?

## A. Taylor - Direct Examination

1 A. Yes.

2 Q. Do you talk about something called the cost of voting  
3 index in your report?

4 A. Yes. There is this covey -- and probably better to be  
5 called the ease of voting index because there's no -- you  
6 don't have to pay money to vote, but this is three political  
7 science colleagues who have come up with this index which  
8 takes a whole variety of voting practices, such as the amount  
9 of early in-person voting, the vote by mail -- rules regarding  
10 vote by mail, the -- whether there's same-day registration or  
11 not, then they create an index out of these various different  
12 contributing factors and come up with a score for each of the  
13 states for I believe it is every biennium rather than  
14 annual -- maybe I should go to recent -- they just published a  
15 book on this and there's a website with historic scores on it.  
16 And in 2022, which is the last data point before when I wrote  
17 the report, North Carolina was 24th in the rank of states.

18 Q. Thank you, Dr. Taylor. Did you also look at Black and  
19 White registration rates in North Carolina in your report?

20 A. I did.

21 Q. What did you determine about Black and White registration  
22 rates in North Carolina?

23 A. Well, what I did in 2022 is to take the proportion of the  
24 White and Black Voting Age Population in North Carolina that  
25 was registered and compare it to the equivalent national

## A. Taylor - Direct Examination

1 numbers. So the White Voting Age Population in North  
2 Carolina, 63.4 percent of it was registered. That figure  
3 nationally was 70.9 percent. So the North Carolina figure as  
4 a proportion of the national figure was .894.

5 The equivalent registration rates for Black North  
6 Carolinians were 58.3 percent in North Carolina, 64.1 percent  
7 in the United States, the North Carolina figure, as proportion  
8 of the national figure is .91, and therefore higher than the  
9 White figure.

10 Q. Thank you, Dr. Taylor. Did you also look at turnout  
11 rates in North Carolina?

12 A. Yeah. For the 2022 election?

13 Q. Yes.

14 A. And I did the same thing, used the same -- used the same  
15 method. So here I am, again, taking the White score in North  
16 Carolina as a proportion of the White score nationally  
17 compared it to the Black, and the Black score in North  
18 Carolina is a higher proportion of the Black score nationally  
19 than the White score in North Carolina is of the White score  
20 nationally.

21 Q. Did you also analyze any aspects of voting practices  
22 within the 11 counties specifically?

23 A. Yes, two. So first of all, I took -- and, again, this is  
24 2022. This was the last election for which I could do this  
25 when I wrote the report. It's not 2024.

## A. Taylor - Direct Examination

1       For 2022, I took -- I looked at the number of in-person  
2 election day -- election day is in person -- election day  
3 polling places and looked at the proportion that was in the 11  
4 counties of the northeastern part of the state and then  
5 compared the proportion of those polling places with the  
6 proportion of the population, the state's population that  
7 resides in those 11 counties and the proportion of polling  
8 places is higher -- or was higher in 2022 at least than the  
9 proportion of people.

10       The second part of analysis I did was actually with  
11 regards to the placement of in-person early voting sites  
12 within the 11 counties. And in 2022, there were 19 of those,  
13 and 14 of those 19 were in census tracts within the counties  
14 in which the proportion -- the Black population as a  
15 proportion of the whole was larger than in the home county,  
16 the county in which the early voting polling place was, as a  
17 proportion of their Black population.

18 Q.    Can the Court find a list of those sites on pages 19 and  
19 20 of your report?

20 A.    Yes. And then the five polling places that were in  
21 census tracts where -- were in census tracts where the Black  
22 population was actually lower than the county as a whole are  
23 in footnote 41.

24 Q.    Thank you, Dr. Taylor.

25       To the best of your knowledge, did Dr. Burch criticize

## A. Taylor - Direct Examination

1 your analysis of polling places in her rebuttal or  
2 supplemental reports?

3 A. No.

4 Q. All right. I would like to look at Section 6 of your  
5 report, Dr. Taylor, which is called Responsiveness of Policy  
6 Makers. What Senate factor do you analyze here?

7 A. Number 8.

8 Q. What is your understanding of Senate Factor 8,  
9 Dr. Taylor?

10 A. One of the two supplementals, the first supplemental but  
11 often called Senate Factor 8.

12 It has to do with a sufficient lack -- the actual --  
13 sufficient lack of responsiveness by policymakers to the  
14 particularized needs of the group in question.

15 Q. Is particularized a term of art in political science?

16 A. Yes. It generally refers to, when I've seen it used in  
17 journal articles and books and discussing it with my  
18 colleagues, it refers to the direction of government resources  
19 to a geographic target.

20 So we talk about the sort of particularized benefits as  
21 being those that members of Congress would direct to their  
22 constituents in their districts or states.

23 I've done some work on presidents and the direction of  
24 federal procurement dollars to particular states. So that's  
25 the general meaning that it has in political science.

## A. Taylor - Direct Examination

1 Q. Can you explain the methods that you use to assess the  
2 responsiveness of elected officials to the particularized  
3 needs of the Black community in northeastern North Carolina?

4 A. Yes. Well, first of all, I did a systematic overview of  
5 the responsiveness of North Carolina policymakers to the state  
6 as a whole. I think it would be fair to say that that is a  
7 necessary, if not sufficient, but nevertheless a necessary  
8 condition for a government to have responsiveness to its  
9 population as a general principle of which, of course, any  
10 subgroup is part anyway.

11 So I took Devin Caughey and Chris Warshaw's data, pretty  
12 complex data, in their recent book on state politics and  
13 policy called Dynamic Democracy, and what they do is they  
14 create a score on a single dimension with a negative one and  
15 plus one poll for both the -- for every year in their data  
16 series for every state for both policy -- and I can explain if  
17 you want later on exactly how they come up with that -- and a  
18 score for public opinion in the state.

19 And basically -- and I can explain that as well if you  
20 want it in more detail.

21 And basically, I correlated for each state across all the  
22 years the two scores, and I'm not sure if people know -- I  
23 mean, people in the room know a lot about some really  
24 sophisticated statistical stuff, so I figure they might know  
25 about correlation coefficients, so basically it goes from one



## A. Taylor - Direct Examination

1 to minus one at polls with plus one being an absolute positive  
2 correlation. In this case, it would mean that as opinion  
3 moved to the left or right so did the policy and then negative  
4 one which means they're completely going opposite directions  
5 at the same magnitude. So when one went to the left the other  
6 went to the right and to around zero, which means sort of the  
7 movements are unrelated to one another. And then I ranked all  
8 the states by the strength of the correlation coefficient.  
9 And North Carolina in the 37 years from the passage of the VRA  
10 amendments in 1982 to 2019 was number 28 out of 50 for  
11 economic policy.

12 And then on cultural issues, which, you know, if you look  
13 at the issues they use is probably a little bit more closely  
14 related to race than economic issues, we have been a bit more  
15 out of step -- excuse me. We have been since 2011 during  
16 current era of Republican majorities and General Assembly in  
17 positive correlation on these cultural issues is number 25,  
18 right in the middle. And then if you take the third, the --  
19 that's national comparison.

20 And then I've done a little regional comparison and it's  
21 3 of 11 of those 11 old states of the confederacy that Dr.  
22 Burch used early on in her analysis of incarceration rates.

23 Q. Thank you, Dr. Taylor.

24 Did you also examine federal government appropriations?

25 A. Yes, I did. And so you can get data -- and this is

## A. Taylor - Direct Examination

1 specifically particularistic here, right, because we're  
2 talking about actual direction of government resources to  
3 geographic targets, so in the form of procurement grants,  
4 direct payments to individuals. And the USAspending.gov  
5 government website gives you data that can show you every  
6 county in the United States and you can see how much they got  
7 and then you can calculate on a per capita basis every dollar,  
8 the amount in dollars are attributable to every person who  
9 resides in that county.

10 And the 11 -- when you rank the entire 100 counties in  
11 North Carolina, the average rank for those 11 counties in the  
12 northeastern part of the state is number 33 out of 50. So the  
13 average is well in the top half.

14 Q. Does the state government have a similar database to the  
15 federal government where you can look up particularized  
16 appropriations?

17 A. No, not really. The Office of State Budget management's  
18 been I think working on something like this, but not really.  
19 So we have to do other things to be able to get an  
20 understanding of how counties in North Carolina benefit from  
21 particularistic spending by the state government.

22 Q. And did you look at local school funding, Dr. Taylor, on  
23 page 23 of your report?

24 A. Yes, I did.

25 Q. What did you find?

## A. Taylor - Direct Examination

1 A. Yeah, 22, 23, right. With regards to -- on a per capita  
2 basis this is.

3 With regards to local appropriations -- excuse me --  
4 local, yeah, local appropriations, which is money spent by the  
5 district itself plus state supplements that, again, on a per  
6 capita basis, again, doing the rankings of county one, top one  
7 to the bottom one, county 100, the average for those 11  
8 counties, average rank is 30.5.

9 Q. And are the rankings listed in footnote 50 on page 23 of  
10 your report?

11 A. Yes. Yes. It's not 49 -- yeah. It's 50 for that one,  
12 yes.

13 Q. Were the majority of Dr. Burch's counties in the top 25  
14 in appropriations?

15 A. There was one, two, three, four, five, six, so that would  
16 be a majority of 11, yes.

17 Q. And you reference supplemental funding from the state in  
18 this footnote and you also just mentioned it. Can you explain  
19 to the Court what you mean when you say, "state supplemental  
20 funding"?

21 A. Yes. So the state on top of local appropriations, this  
22 is to the school districts, provides two additional -- top up  
23 funding for two additional factors; one is for low wealth and  
24 one is for small county. I presume the -- that second one is  
25 to enable them to overcome some of the barriers that they have

## A. Taylor - Direct Examination

1 with regards to economies of scale.

2 Q. Thank you, Dr. Taylor.

3 To the best of your knowledge does the North Carolina  
4 Department of Education publish a yearly report for how those  
5 state funds are appropriated based on each fiscal year?

6 A. Yes, I believe so.

7 Q. Okay. I would like to pull up Legislative Defendants'  
8 Exhibit 32, if we could, please. And that's Tab 4 in your  
9 binder, Dr. Taylor.

10 A. Yes, I see that.

11 Q. Have you seen this document before, Dr. Taylor?

12 A. I have.

13 Q. Have you reviewed it before, Dr. Taylor?

14 A. Yes.

15 Q. Does this appear to be a true and accurate copy of the  
16 NCDPI highlight of the North Carolina Public School budget  
17 published in April of 2024?

18 A. It does.

19 Q. You mentioned low wealth supplemental funding for  
20 counties a minute ago; is that right, Dr. Taylor?

21 A. I did.

22 Q. Okay. Let's turn to page 26 of the PDF which is numbered  
23 page 23 in your binder because there's an index that is not  
24 numbered.

25 A. Which page again?

## A. Taylor - Direct Examination

1 Q. I'm sorry. It's numbered page 19 for you, Dr. Taylor.

2 A. Nineteen.

3 Q. Which is PDF page 23. Too many numbers.

4 A. Yes.

5 Q. Is this a graphic depicting the low wealth supplemental  
6 funding that you just mentioned?

7 A. Yes, it appears to be.

8 Q. Are Dr. Burch's 11 counties receiving low wealth  
9 supplemental funding?

10 A. Yes. All of them.

11 Q. All right. Thank you, Dr. Taylor. We can take this  
12 down.

13 Did you also look at particularized appropriation that  
14 the North Carolina General Assembly made to the 11 counties  
15 Dr. Burch identified in her expert report?

16 A. I did.

17 Q. All right. Is a summary of those General Assembly budget  
18 line items found in your expert report at pages 23 and --  
19 through 25?

20 A. Yes.

21 Q. All right. Dr. Taylor, do you summarize the conclusions  
22 that you reached in your expert report on pages 25 through 28  
23 of your expert report?

24 A. Yes.

25 Q. I'm not going to ask you to walk through all of those

## A. Taylor - Cross-Examination

1 because they are there, but can you provide a top-level  
2 highlight of the summary of the findings you made here?

3 A. Yes. I guess I would say that the status and behavior of  
4 Black North Carolinians and Black residents of the 11 counties  
5 relative to their White and general population -- excuse me.  
6 The differences in the status and the behavior of Black North  
7 Carolinians and Black residents of the 11 counties of the  
8 northeastern part of the state relative to their White and  
9 general population equivalence is basically the same and  
10 sometimes even narrower or less than that is the case for  
11 comparable places. And that with regards to the temporal  
12 analysis, that those differences are actually less today than  
13 they were in the past.

14 Q. Thank you, Dr. Taylor.

15 MS. RIGGINS: We'll move in some exhibits on  
16 redirect, but otherwise we will pass the witness.

17 THE COURT: All right. Cross-examination.

## CROSS-EXAMINATION

18  
19 BY MR. JONES:

20 Q. Good afternoon, Dr. Taylor. I'm Stanton Jones. I  
21 represent the Plaintiffs. It's nice to see you again.

22 Dr. Taylor, you understand that Senate Factor 5 looks at  
23 the extent to which Black North Carolinians bear the effects  
24 of discrimination in education, employment, and the like,  
25 correct?

## A. Taylor - Cross-Examination

1 A. Yes.

2 Q. Let's talk about discrimination. Historically there has  
3 been discrimination against Black North Carolinians in voting  
4 specifically, right?

5 A. Historically, yes.

6 Q. Before the Reconstruction Amendments with the 15th  
7 Amendment, Black people in North Carolina couldn't vote at all  
8 by law, correct?

9 A. Yes.

10 Q. After that Black people gained the right to vote, but in  
11 the late 19th century there was a violent backlash against  
12 Black North Carolinians gaining political power through  
13 elections, correct?

14 A. Yes. Yes.

15 Q. More recently, in the 20th century, there was official  
16 legal discrimination in North Carolina against Black people in  
17 voting, which included both poll tax -- poll taxes, and  
18 literacy tests with grandfather clauses, correct?

19 A. Yes.

20 Q. North Carolina's literacy test, although unenforceable  
21 today due to court rulings, has never been repealed by the  
22 General Assembly and is still on the books in this state; is  
23 that correct?

24 A. If you represent that to me, I will -- I will go with  
25 that.

## A. Taylor - Cross-Examination

1 Q. More recently, fast forwarding to this century, you are  
2 aware that the voter ID and general election law enacted by  
3 the General Assembly in 2013 was struck down by the courts for  
4 targeting African Americans with almost surgical precision,  
5 correct?

6 A. Yeah. That was a view of one court at one point in time.

7 Q. The congressional plan enacted by the General Assembly in  
8 2011 was struck down by the court because it was a racial  
9 gerrymander that diluted the voting strength of Black voters  
10 in this state specifically, you know that, correct?

11 A. Yes.

12 Q. Also portions of the State House and State Senate maps  
13 enacted by the General Assembly in 2011 were struck down by  
14 the courts as racial gerrymanders, once again, the type of  
15 racial gerrymanders that target the voting strength of Black  
16 North Carolinians, you know that, correct?

17 A. So you're talking about the Cooper versus Harris and  
18 North Carolina versus Covington cases, I assume?

19 Q. Correct.

20 A. Yes. So comparative analysis would say, you know, has  
21 this got -- is North Carolina unique in this regard? Has  
22 North Carolina got better or worse on these metrics in that  
23 regard? And you do a comparative analysis of those particular  
24 things and come up with a judgment from that.

25 Q. You did not conduct any analysis in this case attempting



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1 to go compare North Carolina's long history of discrimination  
2 against Black people in voting to discrimination against Black  
3 people in voting either nationally or any other jurisdiction,  
4 did you?

5 A. I did what -- I was charged with regards to Factors 3, 5,  
6 7, and 8 specifically to respond directly to Dr. Burch; and to  
7 the extent I didn't do it, she didn't do it.

8 Q. Sir, I'm asking you a different question.

9 In this case you did not conduct any analysis attempting  
10 to compare North Carolina's history of voting-related  
11 discrimination against Black people to voting-related  
12 discrimination against Black people in the country as a whole  
13 or any other jurisdiction?

14 A. No. For the reasons I stated when I first answered the  
15 question, no.

16 Q. Let's talk about education. First of all, you agree that  
17 educational attainment affects and is indeed as important to  
18 political participation to voting behavior, correct?

19 A. Yes, it's one of a number of factors.

20 Q. People with higher educational attainment tend to have  
21 higher voter turnout; people with lower educational attainment  
22 tend to have lower voter turnout, correct?

23 A. That's correct.

24 Q. Let's talk about discrimination in education. You agree  
25 there has been racial discrimination in education in North

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1 Carolina historically, correct?

2 A. Yes.

3 Q. North Carolina schools were segregated by race by law for  
4 a long time, right?

5 A. Yes.

6 Q. The schools remain segregated by race, by law for a  
7 period of years even after the Supreme Court's decision in  
8 Brown versus The Board of Education in 1954 mandating  
9 disaggregation, right?

10 A. Yes, yes.

11 Q. It would be accurate to say that North Carolina massively  
12 resisted desegregation of its schools, correct?

13 A. Yes, along with a number of other states.

14 Q. And North Carolina, even after Brown, preserved racial  
15 segregation of its schools at least into the 1960s, correct?

16 A. Yes. Again with a number of other states.

17 Q. Let's talk about the disparities that exist -- actually,  
18 let's talk about the segregation in education that persists in  
19 North Carolina today. One measure of school segregation in  
20 schools today that both you and Dr. Burch looked at is called  
21 the segregation index, correct?

22 A. Well, the segregation index is a website that has a whole  
23 host of measures that can convey the extent to which a school,  
24 a jurisdiction like a school district, a state, or the country  
25 as a whole have segregated schools.

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1 Q. And you -- one measure of segregation that was discussed  
2 in the reports is the dissimilarity index specifically,  
3 correct?

4 A. Well, the dissimilarity index has to do with a single  
5 score that you would give a jurisdiction or a state or the  
6 country. And so that convey -- that will be from like zero,  
7 one poll -- let's say one or the other. Zero tends to be the  
8 fully desegregated and one tends to be the fully segregated.

9 So let's say you had a school district that was  
10 50 percent White kids, 50 percent Black kids, there were four  
11 schools, a completely desegregated setup would be where the  
12 four schools were all 50/50; and then a completed segregated  
13 setup would where each of the schools -- two schools each are  
14 100 percent Black or 100 percent White. That would give you  
15 one score.

16 But this is more of an exposure score that I reported in  
17 my testimony under direct from Ms. Riggins which was comparing  
18 the -- taking the average White kid and the number of -- the  
19 proportion of non-White kids in their school and vice versa.  
20 So that's a slightly different -- it's a different measure.  
21 Generally, as you might imagine, they're pretty highly  
22 correlated.

23 But if you remember from the deposition, you showed me  
24 the map of -- from the site index.org and that measure was a  
25 dissimilarity index on the map, what you remember it has all

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1 the greens and what have you. And then we were talking in the  
2 deposition about that. But this is more of an exposure-type  
3 score.

4 Q. My question is just a little bit different. One of the  
5 measures of segregation that Dr. Burch talked about is the  
6 dissimilarity index, right, you recall that?

7 A. Yes. I can have a look in the -- if you point me to it,  
8 but I'll take that, yes.

9 Q. Okay. I asked you about it at the deposition and you  
10 told me that was a measure of dis --

11 A. Yes.

12 Q. Sorry. Let's try not to talk over each other. I'll ask  
13 you a question and then you can answer.

14 You testified at the deposition that you were familiar  
15 with the dissimilarity index as a measure of school  
16 segregation; do you recall that?

17 A. Yes, as I explained.

18 Q. And do you recall that the dissimilarity index measure of  
19 segregation for North Carolina was .44?

20 A. Between which groups?

21 Q. Between Black and White.

22 A. Yeah. I mean, I think if you look -- yeah.

23 Q. I'm just asking whether you remember that. I can refresh  
24 you if you want.

25 A. If I testified to that, yes. The great -- I mean, the

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1 great thing is if you look at the map it gives you all the  
2 years and it moves across years. And my sense is that it's  
3 less than that now but, you know, I don't have the data in  
4 front of me to look at that.

5 Q. Okay. I asked you at deposition, So you understand what  
6 Dr. Burch says when she reports here the index of  
7 dissimilarity in North Carolina elementary schools is .44; and  
8 your answer was, yes.

9 A. Oh, in elementary schools only. Well, that -- yes. I  
10 was thinking in my head there schools overall, so it's  
11 plausible I guess; but if I said it at deposition, then yes.

12 Q. So just to understand what that .44 means in terms of  
13 segregation, it means that the percentage of White students in  
14 the average White students school is 44 percentage points  
15 higher than the proportion of White students in the average  
16 Black students school, correct?

17 A. If the -- that's what the score means.

18 Q. That's all I'm asking, that's what the score means,  
19 right?

20 A. Yes.

21 Q. So, for example, if the average Black child in North  
22 Carolina goes to a school that has 30 percent White students,  
23 a dissimilarity index of .4 tells us that the average White  
24 child goes to a school that has 74 percent White students  
25 because that's the 30 percent plus 44, correct?

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1 A. In that measure, yes. Again, that's what the measure  
2 says.

3 Q. Okay.

4 A. But I don't know -- you know, again, I'm -- is that more  
5 than other states or less than other states?

6 Q. I didn't ask you about the United States.

7 A. No, I know.

8 Q. Okay. Do you recall that the dissimilarity index measure  
9 of segregation in North Carolina increased from .24 in 1991 to  
10 .39 in 2022?

11 A. I wouldn't know off the top of my head, but if we did  
12 that during the deposition, then yes.

13 Q. Okay. I'll refresh your recollection. I asked you at  
14 your deposition: Let's look at the trend statewide over time,  
15 am I right that based on the data reported here, the  
16 White-Black segregation dissimilarity index in North Carolina  
17 has increased from .24 in 1991 to .39 in 2022 and you answered  
18 yes.

19 A. And the data presented to me was the data from SEG index  
20 on the map?

21 Q. Correct.

22 A. Okay.

23 Q. So over the last 30 years the dissimilarity measure of  
24 Black-White school segregation in North Carolina has increased  
25 by over 50 percent, right, .24 to .39?

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1 A. If that's -- if those are the figures, yes.

2 Q. And we agreed those were the figures; we just did that a  
3 minute ago, correct?

4 A. Yes. Okay. I mean, I don't have them in front of me  
5 now.

6 Q. Let's pull up PX200. Dr. Taylor, this is a document that  
7 we looked at together previously. This is a report that was  
8 cited by Dr. Burch in her report. And you had the opportunity  
9 to review this and you did have a look at it; do you recall  
10 that?

11 A. Yes.

12 Q. And you don't have any basis to disagree with any of the  
13 figures that are reported in this report, correct?

14 A. I guess not, no.

15 Q. Can we turn to page 4 of the report titled, "Executive  
16 Summary." Can we blow up the numbered bullets one through  
17 six.

18 Under number two, the first bullet point reads: In 2021,  
19 the typical White student attended a school where 58.9 percent  
20 of the students were White, even though White students only  
21 comprised 45 percent of the total state enrollment.

22 Do you see that, and did I read it correctly?

23 A. Yes.

24 Q. And you don't have any basis to dispute those figures,  
25 correct?

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1 A. No.

2 Q. Correct?

3 A. Yes. Sorry. No reason to dispute them.

4 Q. The next bullet says: The typical Black student attended  
5 a school where 41.2 percent of the students were Black, even  
6 though Black students accounted for 25 percent of the state's  
7 enrollment.

8 Did I read that correctly?

9 A. Yes.

10 Q. And you have no basis to dispute that either, correct?

11 A. No. I mean, it sounds sort of consistent with the  
12 figures that I presented when I did the comparative analysis  
13 in the report.

14 Q. Okay. If we go down to number three, not the third  
15 little Black bullet point but the number three, it says: In  
16 2021, Black students had the least exposure to White students;  
17 the typical Black student attended a school with 28.3 White  
18 schoolmates.

19 Did I read that correctly?

20 A. Yes.

21 Q. You do not have any basis to dispute that figure either,  
22 correct?

23 A. No.

24 Q. Number four says: Despite accounting for less than half  
25 of the state's enrollment in 2021, 68.6 percent of White



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1 students attended majority White schools.

2 Did I read that correctly?

3 A. Yes.

4 Q. And you have no basis to dispute that figure either,  
5 correct?

6 A. No.

7 Q. Correct?

8 A. Yes. Sorry. No basis to dispute it.

9 Q. Both you and Dr. Burch looked at school segregation in  
10 the 11 Black-Belt counties that were discussed, correct?

11 A. Correct.

12 Q. Those 11 Black-Belt counties are more -- their schools  
13 are more segregated than the state schools as a whole in terms  
14 of Black-White school segregation, correct?

15 A. Well, you have to compare it now to the general  
16 population, right. So the proportion of the school age  
17 population in those 11 counties is a lot more Black -- the  
18 proportion that's Black is a lot higher than it is in the  
19 state as a whole or in the other remaining 89 counties. So  
20 that would be a benchmark. You wouldn't just sort of do  
21 50/50. You'd have to see what proportion is Black, what  
22 proportion is White, because we have a complicating factor, as  
23 is noted in the report, of other groups; but if we just say  
24 Black and White and then you would see whether in the average  
25 school, that would be one way to do it, the White population

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1 is the same as the White population overall. And if you had a  
2 school where the White population and Black population varied  
3 greatly, you would have evidence of more segregation.

4 If they're about the same and roughly a microcosm of the  
5 population as a whole, you couldn't say just because there's  
6 60 percent Black kids and 40 percent White it's segregated if  
7 the population was 60 percent Black and 40 percent White.

8 Q. Do you remember I asked you the same question at  
9 deposition and you gave me a different answer?

10 A. I don't. What did I say?

11 Q. So I asked you at the deposition the same question I just  
12 asked you: The 11 counties which are described as the  
13 Black-Belt counties are more segregated than the State of  
14 North Carolina as a whole in terms of Black-White segregation,  
15 is that right?

16 And your answer was: By that measure, yes.

17 Do you recall that?

18 A. By which measure?

19 Q. Do you recall that from the deposition?

20 A. If you represent that to me, I will say yes. But I'm not  
21 sure what measure. By what measure?

22 MR. JONES: Page 83. Pull up line 6 through 11.

23 BY MR. JONES:

24 Q. My question was: You agree with that statement? The 11  
25 counties, which are described as the Black-Belt counties, are

## A. Taylor - Cross-Examination

1 more segregated than the State of North Carolina as whole in  
2 terms of Black-White segregation. Is that right?

3 And your answer was: By that measure, yes.

4 Did I read that correctly?

5 A. You did.

6 Q. And that was truthful testimony you gave at deposition?

7 A. Yes.

8 Q. Okay. Let's talk about the disparities that exist in  
9 education in North Carolina today.

10 Based on all the data that you looked at and that Dr.  
11 Burch looked at, there are racial disparities education both  
12 statewide and in all of the 11 Black-Belt counties with White  
13 students performing higher than Black students according to  
14 every data point that either you or Dr. Burch reported,  
15 correct?

16 A. Yes. I don't use the individual 11 counties. I use an  
17 11-county average, but yes.

18 Q. Okay. Dr. Burch reported that 25.6 of Black North  
19 Carolinians over the age of 25 have earned a Bachelor's or  
20 post-graduate degree compared with 40 percent of White North  
21 Carolinians and you agree with those figures, right?

22 A. Yes.

23 Q. And those figures show a racial disparity on a statewide  
24 basis in North Carolina in terms of Black-White college  
25 graduation rates, correct?

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1 A. Yes.

2 Q. Maybe we can short circuit some of this. In general, you  
3 did not dispute or disagree with any of the actual figures,  
4 the actual numbers that Dr. Burch reported in terms of the  
5 gaps in -- between Black and White educational achievement in  
6 North Carolina, did you?

7 A. No. I report the same.

8 Q. Okay. So in terms of test scores and high school  
9 graduation rates and college graduation rates, there is a  
10 racial disparity in North Carolina statewide with White  
11 students or residents performing better across all of those  
12 metrics than Black residents, correct?

13 A. In North Carolina as in the rest of the country, yes.

14 Q. And within the 11 counties at issue, similarly for test  
15 scores, high school graduation rates, and college graduation  
16 rates, there are racial disparities again with White students  
17 or residents performing higher than Black students or  
18 residents, right?

19 A. Yes, as in the rest of the state.

20 Q. You mentioned earlier one measure of education  
21 performance which was the Nation's Report Card. Do you recall  
22 that you discussed it on your direct?

23 A. Yes.

24 Q. Can we pull up PX201. You looked at the Nation's Report  
25 Card for grade four and grade eight math and reading scores,

## A. Taylor - Cross-Examination

1 correct?

2 A. Yes.

3 Q. And I'm hoping to look at just one of them as an example  
4 and then ask you some summary questions about the other.

5 Just generally, before we look at the document, you know  
6 from your analysis that the data in the Nation's Report Card  
7 shows that there are racial disparities in North Carolina  
8 between Black and White students in both grade four and grade  
9 eight and in both reading and math with White children having  
10 higher scores than Black children across the board, right?

11 A. Yeah. And I report them in footnote 15.

12 Q. Okay. Now we're looking at Plaintiffs' Exhibit 201. Do  
13 you recognize this as the Nation's Report Card 2022 math state  
14 snapshot report for North Carolina for grade four math scores?

15 A. Yes.

16 Q. And if we look at the lower left-hand corner of this  
17 report it has results for student groups in 2022. Can we blow  
18 that up?

19 A. Yeah.

20 Q. Okay. The average grade four math score for White fourth  
21 graders in North Carolina was 246, for Black students it was  
22 219. Do you see that?

23 A. Yes.

24 Q. And that's one of the racial disparities that we  
25 discussed with White students scoring higher than Black

## A. Taylor - Cross-Examination

1 students, in this case, grade four math scores, right?

2 A. Yes.

3 Q. This data table reports that 86 percent of White North  
4 Carolina fourth graders are at or above basic proficiency in  
5 math compared to only 57 percent of Black North Carolina  
6 fourth graders, correct?

7 A. Yes. So I don't report that particular score. It's the  
8 first one that I report.

9 Q. We see that 49 percent of white North Carolina fourth  
10 graders scored at or above that NAEP proficient level in math  
11 compared to only 16 percent for Black students, correct?

12 A. Correct.

13 Q. The far right column shows that 11 percent of White North  
14 Carolina fourth graders scored at advanced level compared to  
15 only one percent of Black North Carolina children, correct?

16 A. Correct.

17 Q. Okay. If we went through similar documents for fourth  
18 grade reading and for eighth grade math and for eighth grade  
19 reading, we'd find comparably large disparities that are  
20 uniformly showing White students in both grades and in all --  
21 in both subjects outperforming Black students in North  
22 Carolina, correct?

23 A. They'd be disparities. I don't know, again, whether  
24 they'd be large would depend upon relative to other states.  
25 And as I said, they're not necessarily usually large, but

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1 certainly there would be disparities, yes, as you know.

2 THE COURT: We'll be in recess until 9:00 a.m.  
3 tomorrow.

4 \* \* \*

5 (The proceedings were recessed at 5:00 p.m.)  
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## A. Taylor - Cross-Examination

1 UNITED STATE DISTRICT COURT  
2 EASTERN DISTRICT OF NORTH CAROLINA  
3

4 CERTIFICATE OF OFFICIAL REPORTER  
5

6 I, Amy M. Condon, CRR, RPR, CSR, Federal Official  
7 Court Reporter, in and for the United States District Court  
8 for the Eastern District of North Carolina, do hereby certify  
9 that pursuant to Section 753, Title 28, United States Code,  
10 that the foregoing is a true and correct transcript of the  
11 stenographically reported proceedings held in the  
12 above-entitled matter and that the transcript page format is  
13 in conformance with the regulations of the Judicial Conference  
14 of the United States.  
15  
16

17 Dated this 26th day of February, 2025.  
18

19 *Amy M. Condon*

20 /s/ Amy M. Condon  
21 Amy M. Condon, CRR, CSR, RPR  
22 U.S. Official Court Reporter  
23  
24  
25